Le Sept PART
DES
REPORTS
DE
Sr. EDW. COKE, Chivalier,
CHIEF JUSTICE DEL COMMON-BANK:
DES

Divers Reſolutions & Judgments donez ſur ſolemnes Arguments, & avec graund deliberation & conference des Treſ-reverend Judges & Sages de la Ley, de Caſes en Ley queux ne fueront unques Reſolve ou Adjudges par devant: Et les Reaſons & Cauſes des dits Reſolutions & Judgments.

Publie en le ſize An del Treſ-haut & Treſ-illuſtre JAQUES Roy *Dengleterre, France & Ireland*, & de *Eſcoſe* le 42. le Fountain de tout Piety & Juſtice, & la vie de la Ley.

Avec References al touts Liures del Common Ley, *cybien Ancient come Modern.*

Frequentibus Argumentis & Collationibus latens veritas aperitur, cum ſub eiſdem verbis ſæpe lateat multiplex intellectus.

Veritas ſæpius agitata magis ſplendeſcit in lucem.

LONDON,

Printed by the Aſſigns of *Rich.* and *Edw. Atkyns*, Eſquires; For Samuel Keble, at the *Turks-Head* in *Fleet-ſtreet*; and John Walthoe, in *Vine-Court, Middle Temple*, 1697.

DEO, PATRIÆ, TIBI.

SExtæ Commentariorum ſive Relationum mearum parti extremam manum addideram (Lector candide) cum, quæ ſingulos exercuit Angliæ *Judices, oborta eſt controverſia, cujus certè ſimilis nunquam fuit ante hunc diem in Aula* Weſtm *agitata: Unde etiam, dum eorum quæ audieram recens admodum memoria fuit, ea præcipuè (prout mos eſt ſemperque apud me fuit) quæ ſummariè ex omnibus diſputationibus atque argumentis, plurimum ponderis ac momenti, ſive authoritates ſive rationes ad ſolvendam quæſtionem annotaſſem, in proprium ſolamen meum & juvamen (infida enim eſt labiliſque memoria) privatim literis mandavi. Nunquam autem iſta quoviſmodo in publicum proditura putavi, quia (quod primum arbitror & præcipuum quod ex Relationibus edendis percipi poteſt emolumentum) non veriſimile eſt hunc caſum de aliis in judicando cognitionem informaturum: Nam duo nobiliſſima ſimul & antiquiſſima regna, in unam conflari monarchiam, uno in utriſque florentiſſimo Rege invictiſſimoque monarcha dominante, hoc uſu infrequens, imo ſicut ipſe Phœnix unicum & individuum eſt in ſpecie, cum quo comparari poteſt ſocium habens neminem. Tum demum cum tantum, quantum mei ſolius cauſa apud memet annotare volui, perfeciſſem, mandatum mihi fuit, ut de novo (quod non minimi ſudoris erat & difficultatis) in uſum etiam publicum, recolligerem: Nam certè ſuccincta iſta & compendioſa annotandi methodus, quæ ſatis eſt in memoriam colligentis, qui omnia atque ſingula prout geſta fuerunt*

I Had no ſooner (good Reader) made an end of the Sixth Part of my Commentaries or Reports, but the greateſt Caſe that ever was argued in the Hall of *Weſtminſter* began to come in queſtion, and afterwards was Argued by all the Judges of *England.* This great Caſe (for that Memory is *infida & labilis*) whiles the Matter was recent and freſh in mind, and almoſt yet ſounding in the Ear, I ſet down in writing, out of my ſhort Obſervations which I had taken of the effect of every Argument, (as my manner is, and ever hath been) a ſummary memorial of the principal authorities and reaſons of the Reſolutions of that Caſe, for mine own private ſolace and inſtruction. I never thought to have publiſhed the ſame, for that it was not like to give any direction in like Caſes that might happen, (the chiefeſt end of publiſhing Reports) it is of his own nature ſo like the Phœnix, and ſo ſingular and rare in accident, as the union of two famous and ancient Kingdoms in ligeance and obedience under one great and mighty Monarch. Now when I had ended it for my private, I was by commandment to begin again (a matter of no ſmall labour and difficulty) for the publick. For certainly, that ſuccinct method and collection that will ſerve for the private memorial or repertory, eſpecially of him that knew and heard all, will nothing become a publick Report for the preſent and

all posterity, or be sufficient to instruct those Readers, who of themselves know nothing, but must be instructed by the Report only in the right rule and reason of the case in question. And as *unda gignit undam*, so commonly one labour cometh not alone: This brought on another with it; for seeing this Case was of so rare a quality, I thought good as well for thine instruction and use (good Reader) as for the repose and quiet of many, in resolving of Questions and Doubts (wherein there hath been great diversity of Opinions) concerning their estates and possessions, to publish some others that are common in accident, weighty in consequent, and yet never resolved or adjudged before: So as it is now verified in this, that which hath been said of old, *Labor labori laborem addit.*

With this Seventh Work or part of my Reports (whereunto Almighty God of his goodness hath in this short time, amongst many other publick Employments, enabled me) I have out of my love unto all my dear Countrymen, of what perswasion in Religion soever they be, thought good to give them all a caveat or fore-warning in a Case of great importance, that deeply and dangerously concerns them all in so high a point, that in the first degree it is a *Præmunire*, and in the second High Treason. And yet many men, without all fear (by reason I think they know not the Law) run into the danger thereof almost every day. I must confess, that this is a writing or a scribling World, *quotidie plures, quotidie pejus scribunt.* And sure I am, that no man can either bring over those Books of late written (which I have seen) from *Rome* or Romanists, or read them and justifie them, or deliver them over to any

audierit & cognoverit, nequaquam sane satus erit in eo scribendi genere, quod & in præsens & futurum seculum est duraturum, & quod Lectores etiam, qui per semetipsos nihil habent præter illud quod ex eo quod conscriptum est addiscant, est edocturum. Et sicut unda gignit undam, sic labor unus alium tanquam gemellum aliquem videtur esse consecutum: Nam cum hic quem dixi casus, novus esset & inauditus, animum idcirco induxi non inutile fore, si, cum & temet (candide Lector) in quantum possem erudirem, alias item in ambiguarum quarundam, de terris & tenementis suis (in quibus adhuc graves admodum & inter se pugnantes Jurisperitorum opiniones extiterunt) quæstionum solutionem satisfacerem, alios nonnullos casus usu frequentiores, & dignitate inter cæteros nequaquam minores, nunquam antehac dilucidè satis judiciis explicatos, in medium proferrem: Ita ut jam ratum sit quod jamdudum apud antiquos in proverbium abiit, Labor labori laborem addit.

Putavi ego, ex mea in Conives meos charitate, cujuscunque demum conditionis religionisve sint, navandam esse operam, ut non solum hanc septimam Relationum mearum partem (cui colligendæ ac in lucem edendæ Deus in hisce temporum angustiis, dum in gravioribus Reipublicæ negotiis versatus sum, vires dedit) omnibus ob oculos ponerem, sed ut eosdem etiam adhortarer & præmonerem in quodam non mediocris momenti casu, qui singulos ita necessariò, eoque modo spectat, ut, si quid in eo peccatum fuerit, in primo gradu sit pœna de Præmunire, *in secundo læsæ Majestatis culpa, in quo tamen multi (dum Legem, ut mihi videtur, ignorant) temerè & inconsulto penè quotidiè delinquunt. Mihi certè confitendum est, eo usque nunc temporis redactum esse hoc seculum, ut quisq; pro se sedulo in discribendis libellulis faciat,* viz. Quotidie plures, quotidie pejus scribunt. *& certo certius est si quisquam hominum libros istos (quos ego vidi) nuperrimè conscriptos à Roma vel à Romanistis ad nos*

usque

uſque attulerit, aut eos legendo ſuffragiis patrocinatus fuerit, aut eos item aliis approbando (quod maxime apud authores in votis eſt) legendos dederit, in ſummas, & turbulentiſſimas periculorum tempeſtates incidat neceſſum eſt: Nam primò cum in hunc modum peccârit pœnas dabit per Præmunire (*quæ ſic ſe habent, adjudicari non eſſe in Regis protectione; eorum terras & bona omnia in Regis poteſtatem redigi; & corpora carceri perpetuo damnari:*) *& qui ſecundò deliquerit læſæ Majeſtatis grave ſupplicium incurret. Hi ſunt illi libri qui ſplendidos & imprimis religioſos præ ſe ferunt titulos, hi illi ſunt qui conſcientiis hominum infirmitate laborantibus opem ferre ſe profitentur, hi ſunt illi denique qui miſeras & miſerandas peccatrices animas in optatum tranquillitatis & ſalutis portum adducere in ſe ſuſcipiunt;* at mors in olla; *quemadmodum plerumque in Pharmacopolarum vaſculis videre eſt,* quorum tituli pollicentur remedia, ſed pixides ipſæ venena continent. *Hiſce ego præmonitionibus uſus ſum è ſolicita eorum cura, qui præſtigias & impoſturas iſtas (quibus hi, quos tanto proſequuntur amore & reverentia, in ſummum capitis periculum eos de improviſo ducant) nondum cognôrunt. Jam vero, neq; culices, qui quaſi titillando pungunt paulò, non pentrant neq; fucos iſtos qui ſuſurris tantis bombuliſq; quos edunt, maximis, aculeis autem, quibus carent ægriùs, nuſquam loci belligerare ſolent tantillum pertimeſco; imo inquam, ut eſt apud Poetam,*

Non metuo pulicis ſtimulos, fucique ſuſurros.

Nec pili quidem æſtimo invidum iſtum & maledicum, qui, quo fuſiùs venena ſua evomeret, libellum quendam, neſcio an rudem an inconcinnum magis, ſub titulo & nomine Pricket, *in lucem protulit, dicatum, Optimo meo Domino & Socero Comiti Exceſtr & inſcriptum,* Memoriale ſive mandatum Juratorum in Aſſiſis apud civitatem Nordovicam, 4 die Auguſti, 1606. *quem ſanè conteſtor non ſolum me omnino inſciente fuiſſe divulgatum, ſed (omiſſis*

other with a liking and allowance of the ſame (as the Authors end and deſire is they ſhould) but they run into deſperate dangers and downfalls; for the firſt offence is a *Præmunire*, which is to be adjudged to be out of the Kings protection, to loſe all their Lands and Goods, and to ſuffer perpetual Impriſonment, and they that offend the ſecond time therein, incur the heavy danger of high Treaſon. Theſe Books have glorious and goodly Titles, which promiſe directions for the Conſcience, and remedies for the Soul, but there is *mors in olla:* They are like to Apothecaries Boxes, *quorum tituli pollicentur remedia, ſed pixides ipſæ venena continent*, whoſe Titles promiſe remedies, but the Boxes themſelves contain Poyſon. This forewarning I give out of conſcience and care of their ſafety, that blindfold might fall into ſo great danger by their means whom they ſo much reverence. I am not afraid of Gnats that can prick and cannot hurt, nor of Drones that keep a buzzing, and would, but cannot ſting.

Non metuo pulicis ſtimulos, fucique ſuſurros.

And little do I eſteem an uncharitable and malicious practiſe in publiſhing of an erroneous and ill ſpelled Pamphet, under the name *Pricket*, and dedicating it to my ſingular good Lord and Father in Law the Earl of *Exceſter*, as a Charge given at the Aſſiſes holden at the City of *Norwich*, 4 *Auguſti* 1606. Which I proteſt was not only publiſhed without my privity, but (beſides the omiſſion of divers principal matters) that there is no one period therein expreſſed in that ſort and ſenſe that I delivered it: Wherein it is worthy of obſervation how their expecta-

tion

tion (of ſcandalizing me) was wholly deceived; for behold the cataſtroph. Such of the Readers as were learned in the Laws, finding not only groſs Errors and Abſurdities in Law, but palpable miſtakings in the very words of Art, and the whole context of that rude and ragged Stile, wholly diſſonant (the Subject being legal) from a Lawyers dialect, concluded, that *inimicus & iniquus homo ſuperſeminavit zizania in medio tritici:* The other diſcreet and indifferent Readers, out of Senſe and Reaſon, found out the ſame concluſion, both in reſpect of the vanity of the phraſe, and for that, I publiſhing about the ſame time one of my Commentaries, would, if I had intended the publication of any ſuch matter, have done it my ſelf, and not to have ſuffered any of my works to paſs under the name of *Pricket*, and ſo *una voce conclamaverunt omnes*, That it was a ſhameful and ſhamleſs practice, and the Author thereof, to be a wicked and malicious falſary.

Circumvertit enim vis & injuria quemque,

Atque unde exorta eſt, ad eum plerumq; revertit.

In theſe and the reſt of my Reports, I have (as much as I could) avoided Obſcurity, Ambiguity, Jeopardy, Novelty and Prolixity. 1. Obſcurity, for that is like unto Darkneſs, wherein a Man for want of Light, can hardly with all his induſtry diſcern any way. 2. Ambiguity, where there is Light enough, but there be ſo many winding and intricate ways, as a Man, for want of direction, ſhall be much perplexed and intangled, to find out the right way. 3. Jeopardy, either in publiſhing of any thing, that might *etiam ipſis potiſſimis) ne unam quidem ſententiolam eo ſenſu & ſignificatione, prout dicta erat, fuiſſe enarratam. Jam vero ſi cataſtrophen expectes, ecce (dum perpetuum in me dedecus & infamiam inurere conatus eſt) quam falſum ejus eum habuit expectatio? Primo enim Lectores illi, juriſperitos dico, qui inter legendum, non ſolum graves & turpes errores & devias opinionum abſurditates, ſed ipſas etiam voces artis tupitèr in alienum ſenſum uſurpatas, & totum denique contextum longiſſime a Juris-conſultorum (de legibus enim agebatur) uſu & conſuetudine remotiſſimum eſſe, animadverterunt, continuò hoc in ore habuerunt,* Inimicus & iniquus homo ſuperſeminavit ziyania in medio tritici. *Deinde alij quoque cordati & æqui Lectores, dum genera dicendi & phraſis levitatem ſeriò perpenderunt, ſuapte ſponte in eandem inciderunt opinionem: nam, cum eodem ferè tempore Commentarium quendam ipſe divulgarem, pro certo ſtatuerunt, ſi ea animus fuiſſent dimulgandi, memtipſum voluiſſe, meo proprio nomine, nequaquam nomine* Pricket, *mea propria opera omnibus inſpicienda præbuiſſe: Idirco quaſi una voce conclamaverunt omnes, Illud ipſum opus tum natura ſua maximè nequam eſſe & pudendum, cum ab opifice ſcelerato & mendaci proficiſcatur:*

Circumvertit enim vis & injuria quemq;
Atque unde exorta eſt, in eum plerunque revertit.

In biſce ſicut in aliis meis Relationibus, hoc mihi præcipuè cura fuit, ut (quantum me penès erat) Obſcuritatem, Ambiguitatem, Periclitationem, Novitatem & Prolixitatem averſarer. 1. *Obſcuritatem, quæ ſanè haud abſimilis tenebrarum eſt, in quibus miſerè ſolis radijs viduos neceſſe eſt hùc illùc, ultrò citroquè, uſquè quaquè deviare.* 2. *Ambiguitatem, in qua non ut ſupra lucis inopia laboramus, ſed varijs meatuum anfractibus, & irremeabilibus dubitationum mæandris ita diſtracti ſumus ut quid ſequendum, quid fugiendum ſit, prorſus ignoremus.* 3. *Periclitationem, ne quic-*

quicquam omninò in medium proferrem, quod quæſtiones magis novas & controverſias ad turbandum, quàm tranquillitatem & concordiam ad ſtabiliendum hunc fluctuantem hominum ſtatum, procreet (non enim convenit, ut hujuſmodi Commentarij illud agant quod plerunque ſolent hyberni ſoles, qui denſiores nebulas & fuliginoſiores concitant, quàm quas eijſdem radiorum viribus diſpergere valeant) aut quod Lectorem meum vel in primaria erroris & dubitationis limina quoquo modo ducat. 4. Novitatem, eò quòd id maximè laborandum arbitror, ut novas quaſcunque interpretatiunclas & privatas opiniones (quæ, ſi ad amuſſim noſtrorum librorum & antiquorum exempla applicentur, nequaquam quadrant) periculoſiſſimas, & ſtudiis noſtris indigniſſimas evitem: nam periculoſum exiſtimo quod bonorum virorum non comprobatur exemplo. *5. Prolixitatem, cum in Relationibus hoc imprimis ſit optandum, ut ſint adeo compendiariò breves, prout neceſſitas reſque ipſa ferre poteſt; ſicut enim* languor prolixus gravat medicum, ita Relatio prolixa gravat lectorem.

Quòd caſus ille de Poſtnatis reliquis eſt prolixior, confitendum eſt, at vero tres, quæ fuſiorem me fecerunt in eo renuntiando, cauſæ graviores acceſſerunt. 1. Quòd in Camera Scac' cauſus erat diſcuſſus, ad quem quidem diſcutiendum omnes Angliæ Judices (quemadmodum leges & conſuetudines poſtulant) ſigillatim, apertè, & copioſè ſunt argumentati. 2. Quia non alius fuit uſpiam caſus in Camera Scaccarij, quod quiſpiam nunc temporis virorum cogitatione poteſt aſſequi, quem tot inſimul Judices tamq; elaboratè, pertractârunt: non enim Dominus Cancellarius ſolum, ſed alij etiam quatuordecim Judices in eodem caſu vires ſuas & ingenia limatè exercuerunt. 3. Quia tanta fuit varietas atque copia tàm materiæ rationum & argumentorum ponderibus libratæ, quàm formæ multis excellentium ingeniorum, mirabiliumq; artium ornamentis decoratæ, ut brevitèr & ſuccinctè magis referri non poſſe videbatur.

rather ſtir up Suits and controverſies in this troubleſome World, than ſtabliſh quietneſs and repoſe between Man and Man (for a Commentary ſhould not be like unto the Winterly Sun, that raiſeth up greater and thicker Miſts and Fogs, than it is able to diſperſe) or in bringing the Reader, by any means, into the leaſt queſtion of peril or danger at all. 4. Novelty, For I have ever holden all new or private interpretations, or opinions, which have no Ground or Warrant out of the Reaſon or Rule of our Books, or former Preſidents, to be dangerous, and not worthy of any Obſervation: For *periculoſum exiſtimo quod bonorum virorum non comprobatur exemplo.* 5. Prolixity, For a Report ought to be no longer than the matter requireth, and as *Languor prolixus gravat medicum, ita relatio prolixa gravat lectorem.*

The Caſe of *Poſtnati*, I confeſs, is longer than any of the reſt, and that for three Cauſes. 1. For that it was an *Exchequer-chamber* Caſe, for deciding whereof all the Judges of *England* (as the Law doth require) did argue openly and at large. 2. For that never any Caſe within Mans Memory, was argued by ſo many Judges in the *Exchequer-chamber*, as this was, there having argued the Lord Chancellor and 14 Judges. 3. For the variety as well of the important matter, as of the ſeveral kinds of excellent Learning and knowledge, delivered in the Arguments of this Caſe.

Finally,

Finally, With these Wishes and Desires I conclude. 1. That the Studious Reader might indeed receive as great profit and delight in Reading this work, as I did (unless mine own judgment deceive me) in composing and framing thereof. 2. That *quoad ejus fieri possit, quam plurima legibus ipsis definiantur, quam pauciſſima vero Judicis arbitrio relinquantur.*

Nunc demum, hoc ulterius tantum votis amplector meis; Primum ut studiosus Lector quantam ego quidem (si non meum me deluserit judicium) in componendis & formandis, tantam ille itidem revera in legendis hisce Relationibus utilitatem simul & voluptatem excerpat; Deinde ut quoad ejus fieri possit, quamplurima legibus ipsis definiantur, quam pauciſſima vero Judicis arbitrio relinquantur.

Casuum istius libri series.

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Postnati

Poſtnati.

Calvin's Caſe, Trin' 6 *Jacobi* Regis.

Ellesmere's Poſtnati 1, 2, 3, &c.

JACOBUS Dei grat' Angl', Scotiæ, Franc' & Hiberniæ Rex, fidei defenſor', &c. Vic' Midd' Salut'. Queſtus eſt nobis Rob' Calvin gener', quòd Richardus Smith injuſtè & ſine judicio diſſeiſeum de libero tenemento ſuo in Haggard, aliàs Haggerſton, aliàs Aggerſton, in paroch' Sancti Leonardi in Shorditch infra triginti annos jam ultim' elapſos. Et ideo tibi præcipimus quòd ſi præd' Robert' fecerit te ſecurum de clameo ſuo proſ. tunc fac' tenementum ill' reſeiſ. de catallis quæ in ipſo capt' fuerint, & ipſum tenementum cum catallis eſſe in pace uſque diē Jovis proxim' poſt Quinden' Sancti Martini proxim' futur'. Et interim fac' 12 liber' & legal' homines de viſn' illo videre tenem' ill', & nomina eorum imbr'. Et ſumm' eos per bonos ſumm' quòd tunc ſint coram nobis ubicunq; tunc fuerimus in Angl' parat' inde facere recognit'. Et pone per vad' & ſalvos pleg' præd' Richardum & Nicholaum vel ballivos ſuos ſi ipſi invent' non fuerint qd' tunc ſint ibi aud' ill' recognit'. Et habeas ibi ſumm' nomina pleg', & hoc breve. T. me ipſo apud Weſtm' tertio die Novembris, Anno regni noſtri Angl', Franc' & Hibern' quinto, & Scotiæ quadrageſimo primo.

Pro quadragint' ſolid' ſolut' in Hanperio.

Kindeſley.

Aſſiſa ven' recogn' ſi Richardus Smith & Nicholaus Smith injuſtè & ſine judicio diſſeiſ. Robert' Calvin gen' de libero tenem' ſuo *Midd.*

in Haggard, alias Haggerſton, alias Aggerſton in parochia S. Leonardi in Shorditch infra triginta annos jam ultimos elapſos Et unde idem Robertus, qui infra ætatem vigint' & unius annor' exiſtit, per Johan' Parkinſon & Will' Parkinſon gardianos ſuos per Cur' dom' Regis hic ad hoc conjunctim & diviſim ſpecialiter admiſſ. quer' qd' diſſeiſ. eum de uno meſſ. cum pertin', &c. Et præd' Rich' & Nichol' per Will' Edwards attorn' ſuum ven', & dicunt qd' præd' Robert' ad breve ſuum præd' reſponderi non debet, quia dicunt, q̃d præd' Robertus eſt alienigen' natus quinto die Novembris anno regni dom' Regis nunc Angliæ, Franciæ & Hiberniæ tertio, & Scotiæ triceſimo nono apud Edenborough infra regnum ſuum Scotiæ præd', ac infra ligeanc' dicti dom' Regis dicti regni ſui Scotiæ, ac extra ligeanc' dicti dom' Regis regni ſui Angliæ. Quodq; tempore nativ' præd' Roberti Calvin ac diu antea & continue poſtea præd' regn' Scotiæ per jura, leges & ſtatuta ejuſdem regni propria, & non per jura, leges, vel ſtatuta hujus regni Angliæ, regulat' & gubernat' fuit & adhuc eſt. Et hoc parat' ſunt verificare, unde pet' judic' ſi præd' Robertus ad breve ſuum præd' reſponderi debeat, &c. Et præd' Robertus Calvin dicit, q̃d præd' placitum per præd' Richard' & Nicholaum ſuperius placitat' minus ſufficiens' in lege exiſtit ad ipſum Rob' à reſponſ. ad breve ſuum præd' habend' repellend', quodq; ipſe idem Rob' ad placit' ill' modo & forma præd' placit' neceſſe non habet nec per legem terræ tenetur reſpondere. Et hoc parat' eſt verificare, unde petit judicium: Et quod præd' Rich' & Nichol' ad præd' breve ipſius Roberti reſpondeant. Et præd' Rich' & Nicholaus, ex quo ipſe ſufficien' materiam in lege ad ipſum Robertum à reſponſ. ad breve præd' habend' repellend' ſuperius allegaver' quam ipſi parat' ſunt verificare: Quam quidem materiam præd' Robertus non dedic', nec ad eam aliqualiter reſpondet, ſed verificat' ill' penitus admittere omnino recuſat, ut prius per' judicium ſi præd' Robertus ad breve ſuum præd' reſponderi debeat &c. Et quia Cur' dom' Regis hic in judicio ſuo de & ſuper præmiſſ. reddendo nondum adviſatur, dies inde dat' eſt partibus prædict' coram domino Rege apud Weſtm' uſque diem Lunæ proxim' poſt Octab' Sancti Hillarij de judicio ſuo inde audiendo, eo q̃d Cur' dom' Regis hic inde nondum, &c. Et aſſiſa præd' remanet coram eodem domino Rege uſque eundem diem Lunæ ibidem, &c. Et Vicecom' diſtring' recogn' Aſſiſæ prædictæ. Et interim fac' viſum, &c. Ad quem diem coram domino Rege apud Weſtm' ven' tam præd' Robertus Calvin per Gardianos ſuos prædictos, quam prædicti Richardus Smith & Nicholaus Smith per attornat' ſuum prædictum. Et, quia Cur' domini Regis hic de judi-

cio

dicio ſuo inde & ſuper præmiſſis reddendo nondum adviſatur dies inde dat' eſt partibus præd' coram dom' Rege apud Weſtm' uſque diem Lunæ proxim' poſt Craſtin' Aſcenſionis dom' de judicio ſuo inde audiend' eo quod Cur' dom' Regis hic inde nondum,&c. Et aſſiſa præd' reman' ulterius capiend' uſq; eund' diē Lunæ ibid',&c. Et vicecom' ſicut alias diſtring' recogn' aſſiſæ præd',& interim fac' viſum,&c. Ad quem diem coram domino Rege apud Weſtm' ven' tam præd' Robertus Calvin per gardianos ſuos prædictos, quam præd' Richardus Smith & Nicholaus Smith per attornat' ſuum præd',&c. Et quia Curia,&c.

The queſtion of this matter in Law was, Whether Robert Calvin the Plaintiff (being born in Scotland ſince the Crown of England deſcended to his Majeſty) be an alien born, and conſequently diſabled to bring any real or perſonal (a) action for any lands within the Realm of England. After this caſe had bēn argued in the Court of the Kings Bench, at the barr, by the Counſel learned of either party, the Judges of that Court upon conference and conſideration of the weight and importance thereof, adjourned the ſame (according to the ancient and ordinary courſe and order of law) into the (b) Exchequer Chamber, to be argued openly there; firſt by Counſel learned of either party, and then by all the Judges of England: where afterwards the caſe was argued by Bacon Solicitor General, on the part of the Plaintiff, and by Laur. Hide for the Defendant; and afterward by Hobart Attorney General for the Plaintiff, and by Serjeant Hutton for the Defendant: And in Eaſter Term laſt, the caſe was argued by Heron puiſne baron of the Exchequer, & Foſter puiſne Judge of the Court of Common Pleas; and on the ſecond day appointed for this caſe, by Crooke puiſne Judge of the Kings Bench, and Altham Baron of the Exchequer; the third day by Snigg baron of the Exchequer, and Williams one of the Judges of the Kings Bench; the fourth day by Daniel one of the Judges of the court of Com̃ Pleas, and by Yelverton one of the Judges of the K. Bench: And in Trinity Term following by Warbarton one of the Judges of the Com̃ Pleas, and Fenner one of the Judges of the K. Bench; and after argued by Walmeſly one of the Judges of the Com̃ Pleas, and Tanfield chief Baron: And at two ſeveral days in the ſame Term, Coke chief Juſtice of the Commō Pleas, Fleming chief Juſtice of the Kings Bench, and Sir Thomas Egerton, Lord Elleſmere, Lord Chancellor of England argued the caſe (the like plea in diſability

The Queſtion.
(a) 1 Bulſtr. 134. Yelv. 198. Owen 45. Co. Lit. 129. b. 1 Ard. 25. Moor 431. 1 Keb 266. Cro. El. 142, 683. Cro. Car. 9. 4 Inſt. 152.
How this Caſe hath proceeded.
(b) 2 Bulſtr. 146.

of Robert Calvin's perſon being pleaded mutatis mutandis in the Chancery in a ſuit there for evidence concerning Lands of inheritance, and by the Lord Chancelor adjourned alſo into the Exchequer-Chamber, to the end that one Rule might overrule both the ſaid caſes.) And firſt (for that I intend to make as ſummary a Report as I can) I will at the firſt ſet down ſuch arguments and objections as were made and drawn out of this ſhort record againſt the Plaintiff, by thoſe that argued for the Defendants. It was obſerved, that in this Plea there were four Nouns, quatuor nomina, which were called nomina operativa, becauſe from them all the ſaid arguments and objections on the part of the Defendants were drawn; That is to ſay, ℭ 1. Ligeantia (which is twice repeated in the plea, for it is ſaid, Infra ligeantiam dom' Regis regni ſui Scotiæ, & extra ligeant' dom' Regis regni ſui Angliæ.) ℭ 2. Regnum (which alſo appeareth to be twice mentioned, viz. regnum Angliæ and regn' Scotiæ.) ℭ 3. Leges (which are twice alledged, viz. leges Angliæ and leges Scotiæ, two ſeveral and diſtinct laws.) ℭ 4. Alienigena (which is the concluſion of all, viz. that Robert Calvin is Alienigena.) By the firſt it appeareth, that the Defendants do make two ligeances, one of England, and another of Scotland, and from theſe ſeveral ligeances two arguments were framed, which briefly may be concluded thus: Whoſoever is born infra ligeantiam, within the ligeance of King James of his Kingdom of Scotland, is Alienigena, an alien born, as to the kingdom of England: But Robert Calvin was born at Edenborough, within the ligeance of the King of his Kingdom of Scotland; therefore Robert Calvin is Alienigena, an alien born, as to the kingdom of England. 2. Whoſoever is born extra ligeantiam, out of the ligeance of King James of his Kingdom of England, is an alien as to the Kingom of England: But the Plaintiff was born out of the ligeance of the King of his Kingdom of England; therefore the Plaintiff is an alien, &c. Both theſe arguments are drawn from the very words of the plea, viz. Quod præd' Robertus eſt alienigena, natus 5 Novembris anno regni domini Regis nunc Angliæ, &c. tertio apud Edenborough infra regnum Scotiæ, ac infra ligeant' dicti dom̃ Regis dicti regni ſui Scotiæ, ac extra ligeant' dicti dom' Regis regni ſui Angliæ. From the ſeveral Kingdoms, viz. regnum Angliæ and regnum Scotiæ, 3 arguments were drawn: 1. Quando (a) duo jura (imo duo regna) concurr' in una perſona æquum eſt, ac ſi eſſent in diverſis: but in the Kings perſon there concur 2 diſtinct and ſeveral Kingdoms; therefore it is all one as if they were in divers pſons, and

The Arguments and Objections on the part of the Defendant.

(a) Ellesmer's Poſtnati 88. Apres 14. b 4 Co. 118. a. Cawly 209. Moor 793, 804.

and consequently the Plaintiff is an alien as all the Antenati be, for that they were born under the ligeance of another King. 2. Whatsoever is due to the Kings several politick capacities of the several Kingdoms is several and divided; but ligeance of each Nation is due to the Kings several politick capacities of the several Kingdoms; Ergo, The ligeance of each Nation is several and divided, and consequently the Plaintiff is an alien, for that they that be born under several ligeances are aliens one to another. 3. Where the King hath several Kingdoms by several titles and discents, there also are the ligeances several; but the King hath these two Kingdoms by several titles and discents, therefore the ligeances be several. These 3 Arguments are collected also from the words of the Plea before remembred.

From the several and distinct Laws of either kingdom, they did reason thus: 1. Every subject that is born out of the extent and reach of the Laws of England, cannot by judgment of those laws be a natural subject to the King, in respect of his kingdom of England: But the Plaintiff was born at Edenborough out of the extent and reach of the laws of England; therefore the Pl' by the judgment of the laws of England cannot be a natural subject to the King, as of his kingdom of England. 2. That subject, that is not at the time and in the place of his birth inheritable to the laws of England, cannot be inheritable or partaker of the benefits and privileges given by the laws of England: But the Plaintiff at the time and in the place of his birth was not inheritable to the Laws of England (but only to the Laws of Scotland;) therefore he is not inheritable, or to be partaker of the benefits or privileges of the Laws of England. 3. Whatsoever appeareth to be out of the jurisdiction of the laws of England, cannot be tried by the same laws: But the plaintiffs birth at Edenborough is out of the jurisdiction of the laws of England; therefore the same cannot be tried by the laws of England. Which three arguments were drawn from the words of the Plea, viz. Quodq; tempore nativitatis præd' Roberti Calvin ac diu antea, & continue postea, præd' regnum Scotiæ per jura, leges & statuta ejusdem regni propria, & non per jura, leges, seu statuta hujus regni Angliæ regular' & gubernat' fuit, & adhuc est. From this word Alienigena they argued thus: Every subject that is alienæ gẽtis (id est) alienæ ligeantiæ, est alienigena; but such a one is the Pl'; therefore, &c. And to these 9 arguments, all that was spoken learnedly and at large by those that argued against the Pl' may be reduced.

But it was reſolved by the L. Chancellor and twelve Judges, viz. the two Chief Juſtices, the Chief Baron, Juſtice Fenner, Warberton, Yelverton, Daniel, Williams, Baron Snig, Baron Altham, Juſtice Crook and Baron Heron, that the Plaintiff was no alien, and conſequently that he ought to be anſwered in this Aſſiſe by the Defendant.

How this Caſe was argued by the Lord Chancelor and the Judges.

This Caſe was as elaborately, ſubſtantially and judiciouſly argued by the L. Chancellor, and by my Brethren the Judges, as I ever read or heard of any; and ſo in mine Opinion the weight and conſequence of the Cauſe, both in præſenti, & perpetuis futuris temporibus juſtly deſerved: For tho' it was one of the ſhorteſt and leaſt that ever we argued in this Court, yet was it the longeſt and weightieſt that ever was argued in any Court, the ſhorteſt in ſillables and the longeſt in ſubſtance; the leaſt for the value (and yet not tending to the right of that leaſt) but the weightieſt for the conſequent, both for the preſent and for all poſterity. And therefore it was ſaid, that thoſe that had written de foſſilibus did obſerve, that Gold hidden in the bowels of the earth, was in reſpect of the maſs of the whole Earth, parv' in magno; but of this ſhort Plea it might be truly ſaid (which is more ſtrange) that here was magnū in parvo. And in the Arguments of thoſe that argued for the Plaintiff I eſpecially noted, That albeit they ſpake according to their own heart, yet they ſpake not out of their own head and invention: Wherein they followed the

Job. 8. 8.

counſel given in Gods Book, Interroga priſtinam generationem (for out of the old fields muſt come the new corn) & diligenter inveſtiga patrum memoriam, and diligently ſearch out the judgments of our Forefathers. And that for divers reaſons: Firſt on our own part, Heſterni enim ſumus & ignoramus, & vita noſtra ſicut umbra ſuper terram; for we are but of yeſterday (and therefore had need of the wiſdom of thoſe that were before us) and had been ignorant (if we had not received light and knowledge from our Forefathers) and our days upon the Earth are but as a ſhadow, in reſpect of the old and ancient days and times paſt, wherein the Laws have been by the wiſdom of the moſt excellent men, in many ſucceſſions of Ages, by long and continual experience (the tryal of right and truth) fined and refined, which no one man (being of ſo ſhort a time) albeit he had in his Head the wiſdom of all the men in the World, in any one Age could ever have effected or attained unto. And therefore it is optima regula, qua nulla eſt verior aut firmior in

Co. Lit. 97. b.

jure, Neminem oportet eſſe ſapientior' legibus; no man ought to take

take upon him to be wiſer than the Laws. Secondly, In reſpect of our Forefathers: Ipſi (ſaith the text) docebunt te, & loquentur tibi, & ex corde ſuo proferunt eloquia, they ſhall teach thee, and tell thee, and ſhall uter the words of their Heart, without all equivocation or mental reſervation; they (I ſay) that cannot be daunted with fear of any power above them, nor be dazled with the applauſe of the popular about them, nor fretted with any diſcontentment (the mother of oppoſition and contradiction) within them; but ſhall ſpeak the words of their Heart, without all affection or infection whatſoever.

Alſo in their Arguments of this Caſe concerning an Alien, they told no ſtrange Hiſtories, cited no Forrein Laws, produced no Alien preſidents; and that for two Cauſes: The one, for that the Laws of England are ſo copious in this Point, as God willing by the report of this caſe ſhall appear: The other leſt their arguments concerning an Alien born, ſhould become forrein, ſtrange, and an Alien to the ſtate of the queſtion, which being quæſtio juris, concerning Freehold, and Inheritance in England, is only to be decided by the Laws of this Realm. And albeit, I concurred with thoſe that adjudged the Plaintiff to be no Alien, yet do I find a meer ſtranger in this caſe, ſuch a one as the Eye of the Law (our Books, and Book caſes) never ſaw, as the Ears of the Law (our Reporters) never heard of, nor the Mouth of the Law (for Judex eſt lex loquens) the Judges our Forefathers of the Law never taſted; I ſay, ſuch a one, as the ſtomack of the Law, our exquiſit and perfect Records of Pleadings, Entries & Judgments (that make equal and true diſtribution of all caſes in queſtion) never digeſted. In a word, this little Plea is a great ſtranger to the Laws of England, as ſhall manifeſtly appear by the reſolution of this caſe. And now that I have taken upon me to make a Report of their Arguments, I ought to do the ſame as truly, fully and ſincerely as poſſibly I can: Howbeit, feeling that almoſt every Judge had in the courſe of his Argument a peculiar method, and I muſt only hold my ſelf to one, I ſhall give no juſt offence to any, if I challenge that which of right is due to every Reporter, that is to reduce the ſum and effect of all to ſuch a method, as upon conſideration had of all the arguments, the Reporter himſelf, thinketh to be fitteſt and cleareſt for the right underſtanding of the true reaſons and cauſes of the judgment and reſolution of the caſe in queſtion.

The Method that the Reporter doth uſe.

In this caſe 5 things did fall into conſideration. ¶ 1. Liegeantia. ¶ 2. Leges. ¶ 3. Regna. ¶ 4. Alienigena. ¶ 5. What legal

What things did fall into conſideration in this caſe.

legal inconveniences would enſue on either ſide.

1. Concerning ligeance: 1. It was reſolved what ligeance was: 2. How many kinds of ligeances there were: 3. Where ligeance was due: 4. To whom it was due: And laſtly how it was due.

2. For the Laws: 1. That Ligeance or Obedience of the Subject to the Soveraign is due by the Law of Nature: 2. That this Law of Nature is part of the Laws of England. 3. That the Law of Nature was before any judicial or municipal Law in the World: 4. That the Law of Nature is immutable and cannot be changed.

3. As touching the Kingdoms: How far forth by the Act of Law the union is already made, and wherein the Kingdoms do yet remain ſeperate and divided.

4. Of Alienigena, an Alien born: 1. What an Alien born is in Law: 2. The diviſion and diverſity of Aliens: 3. Incidents to every Alien: 4. Authorities in Law: 5. Demonſtrative concluſions upon the premiſſes, that the Plaintiff can be no Alien.

5. Upon due conſideration had of the conſequent of this caſe: what inconveniences legal ſhould follow on either party.

And theſe ſeveral parts I will in this Report purſue in ſuch order as they have bẽn propounded: And firſt de Ligeantia.

The 1 general part What legeance is. (a) *Bacons* diſcourſe of Laws and Government ſecond part fo. 46,47, &c. Co.Lit. 129.a.

¶ 1. (a) Ligeance is a true and faithful Obedience of the Subject due to his Sovereign. This ligeance and obedience is an incident inſeperable to every Subject; for as ſoon as he is born he oweth by birthright ligeance and obedience to his Sovereign. Ligeantia eſt vinculum fidei: and Ligeantia eſt quaſi legis eſſentia. Ligeantia eſt ligam̃tum, quaſi ligatio mentium: quia ſicut ligam̃tum eſt connexio articulor̃ & junctur', &c. As the ligatures or ſtrings do knit together the joynts of all the parts of the Body, ſo doth Ligeance joyn together the Sovereign and all his Subjects, quaſi uno ligamine. Glanvil, who wrote in the Reign of Hen. 2. lib. 9. cap. 4. ſpeaking of the connexion which ought to be betwẽn the Lord and tenant that holdeth by homage, ſaith, That mutua debet eſſe domini & fidelitatis connexio, ita quod quant' debet dom'ex homagio, tant' illi debet dominus ex dominio, præter ſolã reverentiã, and the Lord (ſaith he) ought to defend his tenant. But betwẽn the Sovereign and the Subject there is without compariſon a higher and greater connexion: for as the ſubject oweth to the King his true and faithful ligeance and obedience, ſo the Sovereign is to govern and protect his Subjects,

regere

regere & protegere ſubditos ſuos: ſo as betwéen the Sovereign and Subject there is duplex & reciprocum ligamen; quia ſicut ſubdit⁹ regi tenetur ad obedientiam, ita rex ſubdito tenetur ad protectionem: meritò igitur ligeantia dicitur à ligando quia continet in ſe duplex ligam̃. And therefore it is holden in 20 H. 7. 8. a. that there is a liege or ligeance betwéen the King and the Subject. And Forteſcue cap. 13. Rex (a) ad tutelam legis, corpor', & bonor' erect⁹ eſt. And in the Acts of Parliament of 10 R. 2. c. 5. & 11 R. 2. c. 1. 14 H. 8. c. 2. &c. Subjects are called liege people: And in the Acts of Parliament in 34 H. 8. c. 1. & 35 H. 8. c. 3. &c. the King is called the liege Lord of his Subjects. And with this agréeth W. Skene in his Book de expoſitione verbor' (which Book was cited by one of the Judges which argued againſt the Plaintiff) ligeance is the mutual bond and obligation betwéen the King and his Subjects, whereby Subjects are called his liege Subjects, becauſe they are bound to obey and ſerve him, and he is called their liege Lord, becauſe he ſhould maintain and defend them. Whereby it appeareth, that in this point the Law of England and of Scotland is all one. Therefore it is truly ſaid, that protectio trahit ſubjectionē, & ſubjectio protectionē. And hereby it plainly appeareth, that ligeance doth not begin by the Oath in the Léet; for many men owe true ligeance that never were ſworn in a Léet, and the ſwearing in a Léet maketh no (b) denization, as the book is adjudged in 14 H. 4. f. 19. b. This word Ligeance is well expreſſed by divers ſeverall names or Synonima which we find in our Books. Sometime it is called the obedience or obeyſance of the Subject to the King, obedientia regi, 9 E. 4. 7. b. 9 E. 4. 6. (c) 2 R. 3. 2. a. in the Book of Entries, Ejectione firmæ 7. 14 H. 8. c. 2. 22 H. 8. c. 8. &c. Sometime he is called a natural liege man that is born under the power of the King, ſub poteſtate reg' 4 H. 3. (d) tit. Dower. Vid. le ſtatute de 11 E. 3. c. 2. Sometime ligeance is called faith, Fides ad fid' reg', &c. Bracton who wrote in the Reign of H. 3. lib 5. tractat. de exceptionib', c. 24. f. 427. Eſt etiã alia exceptio quæ competit ex ꝑſona querentꝫ ꝓpter defect' nationꝫ, ut ſi quis alienigena qui fuit ad fid' reg' Franc', &c. And Fleta (which Book was made in the Reign of E. 1.) agréeth therewith; for li 6. c. 47. de exceptione ex omiſſion' ꝓticipis it is ſaid, vel dicere potuit, q̃d nihil juris clamare poterit tanquam ꝓticeps, eo q̃d eſt ad fidem regis Franciæ, quia alienigenæ repelli debent in Anglia ab agendo, donec fuerunt ad fidem regis Angliæ. Vide 25 E. 3. de natis ultra mare, for ꝛ ligeance del Roy Denglitetre: ꝛ Lit. lib. 2. c. Homage, ſalve le (d) for, q̃ jeo doy a nr̃e ſr̃e le Roy: Glanvil, lib. 9. c. 1. Salva fide debita dño Regi & hæred' ſuis. Sometimes ligeance is called

(a) Cro. Arg. 64.

(b) Br. denizen 11. Apres 15. b.

(c) Br. denizen 8.

(d) 4 Hen 3. Fitz. Dower 179. Elleſmeres Poſtnati, 13 14. Jenk. Cent. 3.

(e) Lit Sect. 85. Co. Lit. 64. b.

called ligealty, 22 Aſſ.Pl.25. By all which it evidently appeareth, that they that are born under the obedience, power, faith, ligealty, or ligeance of the King, are natural Subjects and no Aliens. So as, ſeeing now it doth appear what ligeance is, it followeth in order, that we ſpeak of the ſeveral kinds of ligeance. But herein we need to be very wary, for this caveat the Law giveth, ubi lex non diſtinguit, nec nos diſtinguere debem⁹: and certainly lex non diſtinguit, but where omnia membra dividentia are to be found out and proved by the Law it ſelf.

How many kind of ligeances there be.

¶ 2. There is found in the Law 4 kind of ligeances: the firſt, is ligeantia naturalis, abſoluta, pura, & indefinita, and this originally is due by nature and birthright, and is called alta ligeantia, and he that oweth this is called ſubditus natus. The 2. is called ligeantia acquiſita, not by nature but by acquiſition or denization, being called a denizen or rather donaizon, becauſe he is ſubditus dat⁹. The 3 is ligeantia localis, wrought by the Law, and that is when an Alien that is in amity cometh into England, becauſe as long as he is within England, he is within the Kings protection; therefore, ſo long as he is there, he oweth unto the King a local obedience or ligeance, for that the one (as it hath been ſaid) draweth the other. The 4 is a legal obedience or ligeance, which is called legal, becauſe the municipal Laws of this Realm have preſcribed the order and form of it; and this to be done upon oath at the Torn or Leet. The firſt, that is, ligeance natural, &c. appeareth by the ſaid Acts of Parliament, wherein the King is called natural liege Lord, and his people natural liege Subjects This alſo doth appear in the Inditement of Treaſons (which of all other things are the moſt curiouſly and certainly indited and penned:) for in the inditement of the L. Dacre in 26 H. 8. it is ſaid, p̄d' dñus Dacre debitum fidei & ligeantiæ ſuæ qd' præfato dño regi naturaliter & de jure impendere debuit, minime curans, &c. And Reginald Pool was indited in 30 H. 8. for committing Treaſon cont' dom' regē ſupremum & natural' dōm ſuum. And to this end were cited the inditement of Edw. Duke of Somerſet in 5 E. 6. and many others both of ancient and later times. But in the inditement of Treaſon of John Dethick in 2 & 3. Ph & Mar. it is ſaid, qd' p̄d' Johan' Machinās, &c. pd' dom' Philippum & dom' Mariā ſupremos dños ſuos, and omitted (naturales) becauſe King Philip was not his natural liege Lord. And of this point more ſhall be ſaid when we ſpeak of the local obedience. The ſecond is ligeantia acquiſita, or denization. And this in the Books and Records of the Law appeareth to be threefold: 1. Abſolute as the common denizations be, to them and their

Co. Lit. 129. a.

Ligeantia naturalis.
Co. Lit. 129. a.

Ligeantia acquiſita.
Co. Lit. 129. a.

Heirs

heirs without any limitation or restraint: 2. Limited, as when the King doth grant letters of denization to an Alien, and to the heirs (a) males of his Body, as it appeareth in 9 E. 4. f. 7. in Baggot's Case; or to an Alien for term of his life, as was granted to John Reynel, 11 H. 6. 3. It may be granted upon (b) condition; for (c) cujus est dare, ejus est disponere, whereof I have seen divers precedents. And this denization of an Alien may be effected 3 manner of ways: By Parliament, as it was in 3 H. 6. 55. in Dower: By letters patents, as the usual manner is: And by conquest, as if the King and his Subjects should conquer another Kingdom or Dominion, as well Antenati as Postnati, as well they which fought in the Field, as they which remained at home for defence of their Country, or imployed elsewhere, are all denizens of the Kingdom or Dominion conquered. Of which point more shall be said hereafter.

(a) 9 E. 4. 8.

(b) Co. Lit. 129. a. 274. b.

(c) 2 Co. 7. b. 4 Inst. 192. 2 Sidf. 73. Hard 412. Lit. Rep. 128.

3. Concerning the local obedience, it is observable, that as there is a local protection on the Kings part, so there is a (d) local ligeance of the Subjects part. And this appeareth in 4 Mar. Br. 32. (e) & 3. & 4 Ph. & Ma. Dyer 144. Sherley a Frenchman, being in amity with the King, came into England, and joyned with divers Subjects of this Realm in Treason against the King and Quéen, and in the inditement concluded (f) contra ligeantiæ suæ debit: for he ought to the King a local obedience, that is, so long as he was within the Kings protection; which local obedience, being but momentain and incertain, is strong enough to make a natural Subject; for if he hath issue here, that issue is a (g) natural born Subject: à fortiori he that is born under the natural and absolute ligeance of the King (which as it hath been said is alta ligeantia) as the Plaintiff in the case in question was, ought to be a natural born Subject; for localis ligeantia est ligeantia infima, & minima, & maxim incert. And it is observed, that it is nec cœlū, nec solū, neither the climate nor the soil, but ligeantia and obedientia that make the Subject born: for if Enemies should come into the Realm, and possess a Town or Fort, and have issue there, that issue is no Subject to the King of Eng. though he be born upon his soil, and under his meridian, for that he was not born under the ligeance of a Subject, nor under the protection of the King. And concerning this local obedience, a president was cited in Hill. 36. El. when Steph' Farrara de Gama, and Eman' Lewes Tinoco, two Portugals born, coming into England under Quéen Elizabeth's safe conduct, and living here under her protection, joyned with Doctor Lopez in Treason within this

Ligeantia localis.

(d) Co. Lit. 129. a

(e) B. N. C. 487.

(f) Hob. 271. Co. Lit. 129. a. Dyer 145. pl. 62. Cawly 185. 3 Inst. 11.

(g) Co. Lit. 8. a.

this Realm againſt her Majeſty: And in this caſe two points were reſolved by the Judges: Firſt, That their Indictment ought to begin, that they intended Treaſon contra dñam Reginam,&c. omitting theſe words (naturalē dñam ſuā:) and ought to conclude contra (a) ligeantiæ ſuæ debit'. But if an Alien (b) Enemy come to invade this Realm, and be taken in War, he cannot be indicted of Treaſon: for the indictment cannot conclude contra ligeantiæ ſuæ debit' for he never was in the protection of the King, nor ever ought any manner of ligeance unto him, but malice & enmity; and therefore he ſhall be put to death by martial Law. And ſo it was in anno 15 H. 7. in Parkin (c) Warbeck's Caſe, who being an Alien born in Flanders, fained himſelf to be one of the Sons of Edw. the fourth, and invaded this Realm with great power, with an intent to take upon him the dignity royal: but being taken in the War, it was reſolved by the Juſtices, that he could not be puniſhed by the Common Law: but before the Conſtable and Marſhal (who had ſpecial commiſſion under the great Seal, to hear and determin the ſame according to martial Law) he had ſentence to be drawn, hanged and quartered, which was executed accordingly. And this appeareth in the Book of Griffeth Attorney general, by an extract out of the Book of Hobart, Attorney general to King Hen. 7.

(a) 3 Inſt. 11. Dyer 145. pl. 62. Cawly 185. Hob. 271. Co. Lit. 129. a.

(b) 3 Inſt. 5. 11.

(c) Bacons Hiſt. H. 7. fo. 11.

Ligeantia legalis.

4. Now are we to ſpeak of legal ligeance, which in our Books, viz. 7 E. 2. tit. Avowry 211. 4 E. 3. fol. 42. 13 E. 3. tit. Avowry 120, &c. is called Suit Royal, becauſe that the ligeance of the Subject is only due unto the King. This Oath of ligeance appeareth in Britton, who wrote in anno 5 Ed. 1. cap. 29. (and is yet commonly in uſe to this day in every Lèet) and in our Books; the effect whereof is: You ſhall ſwear, That from this day forward, you ſhall be true and faithful to our Sovereign Lord King *James*, and his Heirs, and truth and faith ſhall bear of life and member, and terrene honour, and you ſhall neither known or hear of any ill or damage intended unto him, that you ſhall not defend: So help you Almighty God. The ſubſtance and effect hereof is (as hath bin ſaid) due by the law of nature, ex inſtitutione naturæ, as hereafter ſhall appear; the form and addition of the Oath is, ex *pviſõe hominis*. In this Oath of ligeance 5 things were obſerved: 1. That for the time, it is indefinite, and without limit, from this day forward: 2. Two excellent qualities are required, that is, to be true and faithful: 3. To whom? To our Sovereign Lord the King and his Heirs: (And albeit Britton doth ſay, to the King of England, that is ſpoken *ppter excellentiam*, to deſign the perſon, and not

Co. Lit. 68. b.

Co. Lit. 68. b.

to

to confine the ligeance: for a Subject doth not ſwear his ligeance to the King only as King of England, and not to him as King of Scotland, or of Ireland,&c. but generally to the King:) 4. In what manner? and faith and troth ſhall bear, &c. of life and member; That is, until the letting out of the laſt drop of our deareſt Heart blood: 5. Where, and in what places ought theſe things to be done? In all places whatſoever; for, you ſhall neither know nor hear of any ill or damage, &c. that you ſhall not defend, &c. ſo as natural ligeance is not circumſcribed within any place. It is holden 12 H. 7. 18. b. That he that is ſworn in the Lèt, is ſworn to the King for his ligeance, That is, to be true and faithful to the King: and if he be once ſworn for his ligeance, he ſhall not bée ſworn again during his life. And all letters patents of denization be, that the patentée ſhall behave himſelf tanquam verus & fidelis ligeus dom' Regis. And this Oath of ligeance at the Tourn and Lèt was firſt inſtituted by King Arthur; for ſo I read, Inter leges ſecundi Edovardi Regis ante conqueſtum 3. cap. 35. Et quod omnes principes & comites, proceres, milites, & liberi homines debent jurare, &c. in Folkmore, & ſimiliter omnes proceres Regni, & milites, & liberi homines univerſi totius regni Britanniæ facere debẽt in pleno Folkmote fidelitatem dom' Regi, &c. Hanc legem invenit Arthurus qui quondam fuit inclitiſſimus Rex Britonum, &c. hujus legis Authoritate expulit Arthurus Rex Saracenos & inimicos a regno, &c. & hujus legis authoritate Etheldred' Rex uno & eodẽ die per univerſum regnum Danos occidit. Vide Lambert int' Regis Edwardi, &c. fol. 135 & 136. By this it appeareth, when and from whom this legal ligeance had his firſt inſtitution within this Realm. Ligeantia in the caſe in queſtion, is meant and intended of the firſt kind of ligeance, That is, of the ligeance natural abſolute, &c. due by nature and birthright. But if the Plaintiffs Father be made a denizen, and purchaſe Lands in England to him and his Heirs, and die ſeiſed, this Land ſhall never diſcend to the Plaintiff, for that the King by his Letters patents may make a denizen, but cannot naturalize him to all purpoſes, as an Act of Parliament may doe; neither can Letters patents make any inheritable in this caſe, that by the Common Law cannot inherit. And herewith agréeth 36 H. 8. tit. Denizen, Br. 9.

Co. Lit. 65. b.

Co. Lit. 68. b. 172. b.

Co. Lit. 8. a.

Homage in our Books is twofold, That is to ſay, Homagium Ligeum, and that is as much as ligeance, of which Bracton ſpeaketh lib. 2. cap. 35. fol. 79. Soli Regi debetur ſive dominio, ſeu ſervitio:

Homage is twofold. Co. Lit. 65. b. Vaugh. 279.

Vaugh. 279.

and there is Homagium feodale, which hath his original by tenure. In F.N.B.269. there is a writ for reſpecting of this latter homage (which is due ratione feodi ſive tenuræ:) Sciatis quod reſpectuamus homagium nobis de ten' & tenitis quæ tenentur de nobis in capite debit'. But Homagium ligeum, i. Ligeantia, is inherent and inſeparable, and cannot be reſpectued.

Where natural ligeance is due.

C. 3. Now are we come unto (and almoſt paſt) the conſideration of this circumſtance, where naturall ligeance ſhould be due: For by that which hath been ſaid it appeareth, that ligeance, and faith and truth, which are her members and parts, are qualities of the mind and ſoul of man, and cannot be circumſcribed within the predicament of ubi, for that were to confound predicaments, and go about to drive (an abſurd and impoſſible thing) the predicament of quality into the predicament of ubi. Non reſpondetur ad hanc quæſtionem, ubi eſt? to ſay, Verus & fidelis ſubditus eſt: ſed ad hanc quæſtionem, qualis eſt? rectè & aptè reſpondetur, verus & fidelis ligeus, &c. eſt. But yet for the greater illuſtration of the matter, this point was handled by it ſelf, and that ligeance of the Subject was of as great an extent and latitude, as the royal power and protection of the King, and è converſo. It appeareth by the ſtatute of 11 H.7. c.1. and 2 E.6.c.2. that the Subjects of England are bound by their ligeance to go with the King, &c. in his Wars, as well within the Realm, &c. as without. And therefore we daily ſee, that when either Ireland or any other of his Majeſties Dominions be infeſted with Invaſion or Inſurrection, the King of England ſendeth his Subjects out of England, and his Subjects out of Scotland alſo into Ireland, for the withſtanding or ſuppreſſing of the ſame, to the end his Rebels may feel the ſwords of either Nation. And ſo may his Subjects of Gerneſey, Jerſey, Iſle of Man, &c. be commanded to make their ſwords good againſt either Rebel or Enemy, as occaſion ſhall be offered: whereas if naturall ligeance of the Subjects of Eng. ſhould be local, that is, confined within the Realm of England or Scotland, &c. then were not they bound to go out of the continent of the Realm of England or Scotland, &c. And the opinion of Thirninge in 7 H.4.tit. Protect.100. is thus to be underſtood, that an Engliſh Subject is not compellable to go out of the Realm without wages, according to the Stat. of 1 E.3. c.7. 18 E.3.c.8. 18 H.6.c.19, &c. 7 H.7.c.1.3 H.8.c.5, &c. In an. 25 E.1 Bigot Earl of N. and S. and Earl Marſhal of England, and Bohon Earl of H. and High Conſtable of England, did exhibit a petition to the K. in French (which I have ſeen antiently recorded) an

2 Inſt. 47, 48, 528.

2 Inſt. 528.

the

the behalf of the Commons of England, concerning how and in what sort they were to be imployed in his Majesties Wars out of the Realm of England: And the Record saith, That post multas & varias altercationes, it was resolved, they ought to go but in such manner and form as after was declared by the said Statutes, which seem to be but declarative of the Common Law. And this doth plentifully and manifestly appear in our Books, being truly and rightly understood. In 3 H.6. tit. Protection 2. one had the benefit of a protection, for that he was sent into the King's Wars in comit' of the protector: and it appeareth by the Record and by the Chronicles also, that this imployment was into France, the greatest part thereof then being under the Kings actual obedience, so as the Subjects of England were imployed into France for the defence and safety thereof: In which case it was observed, that seeing the protector, who was Pro Rex went, the same was adjudged a Voyage royal. 8 H.6 fol. 16 b the Lord Talbot went with a Company of Englishmen into France, then also being for the greatest part under the actual obedience of the King, who had the benefit of their protections allowed unto them. And here were observed the words of the Writ in the Register, fol. 88. where it appeareth, that men were imployed in the Kings Wars out of the Realm per præcept' nostr', and the usual words of the writ of protection be in obsequio nostro.* 32 H.6. fol. 4 a. it appeareth, that Englishmen were pressed into Guyan,† 44 Ed. 3. 12 a. into Gascoign with the Duke of Lancaster, 17 H.6. tit. Protection, || into Gascoign with the Earl of Huntingdon, steward of Guyan, 11 H. 4. 7. a. into (a) Ireland, and out of this Realm with the Duke of Glocester and the Lord Knolls. Vide (b) 19 H.6. 35. b And it appeareth in 19 E. 2. tit. Avowry 224 26 Ass. 66. 7 H. 4. 19, &c. that there was forinsecum servitium forein service, which Bracton fol. 36. calleth regale servitium: and in F.N.B. 28. (c) that the King may send men to serve him in his Wars beyond the Sea. But thus much (if it be not in so plain a case too much) shall suffice for this point for the Kings power, to command the service of his Subjects in his Wars out of the Realm. Whereupon it was concluded, That the ligeance of a natural born Subject, was not local, and confined only to England. Now let us see what the Law saith in time of Peace, concerning the Kings protection and power of command, as well without the Realm as within, that his Subjects in all places may be protected from violence, and that Justice may equally be administred to all his Subjects.

2 Inst. 528.

Co. Lit. 130. b.

Co. Lit. 130. b.

Fitz. protection 5. Br. protection 48.

* Fitz protection 13
† Fitz-protection 35
Br. protection 24.

|| Fitz. protection 56.
(a) Fitz. protection 24. Co. Lit. 130. b. Br protection 34.
(b) Fitz. protection 8. Br. protection 49.
(c) F.N.B. 28. c

In the Regiſter, fol. 25. b. Rex univerſis & ſingulis admirallis, caſtellanis, cuſtodib⁹ caſtror', villarum, & aliorum fortalicior' præpoſitis, vicecom', majorib⁹, cuſtumariis, cuſtodib⁹ portuum, & alior' locor' maritimor' ballivis, miniſtris, & aliis fidelibus ſuis; tàm in tranſmarinis quam in ciſmarinis partib⁹, ad quos, &c. Salutē. Sciatis quod ſuſcepim⁹ in protectionem & defenſionem noſtram, necnon ad ſalvam & ſecurā gardiam noſtram, W. veniendo in regnum noſtrum Angl' & poteſtatē noſtram, tam ꝑ terram quam ꝑ mare cū uno valetto ſuo, ac res ac bona ſua quæcunq; ad tractand'cum dilecto nr̄o & fideli L. ꝑ redemptione priſonarij ipſi⁹ L. infra regnum & poteſtatē noſtra præd', ꝑ ſex menſes morando. & exinde ad ꝑpria redeundo Et ideo &c. quod ipſum W. cum valetto, reb⁹ & bonis ſuis p̄d' veniendo in regnum & poteſtatem noſtr' p̄d' tam ꝑ terrā quam per mare ibid' ut præd' eſt ex cauſa antedicta morando, & exinde ad ꝑpria redeundo, manuteneatis, ꝑtegatis, & defendatis: non inferentes eis, &c. ſeu gravam̄. Et ſi quid eis forisfact', &c. reformari faciatis. In cujus, &c. ꝑ ſex m̄ſes duratur'. T. &c. In which writ 3 things are to be obſerved: 1. That the King hath fidē & fideles in partib⁹ tranſmarinis: 2. The he hath ꝑtectionē in partib⁹ tranſmarinis: 3. That he hath poteſtatē in partib⁹ tranſmarinis. In the Regiſter fo 26. Rex univerſis & ſingulis admirallis, caſtellanis, cuſtodib' caſtror', villar', & alior' fortalicior' præpoſitis, vicecom̄, majorib', cuſtumariis, cuſtodib' portuum, & alior' locorum maritimor' ballivis, miniſtris & aliis fidelibus ſuis tam in tranſmarinis quam in ciſmarinis partib' ad quos, &c. Salutem. Sciatis quod ſuſcepim⁹ in protectionem & defenſionem noſtram nec non in ſalvum & ſecurum conductum noſtr' J. valettum P. & L. Burgenſiū de Lyons obſidum noſtrorum, qui de licentia noſtra ad partes tranſmarinas profectur⁹ eſt, ꝑ finantia magiſtror' ſuorum præd' obtinenda vel deferenda, eundo ad partes præd', ibidem morando, & exinde in Angliam redeundo Et ideo vobis mandamus, quod eid' J. eundo ad partes præd', ibidem morando, & exinde in Angliam redeundo, ut præd' eſt, in perſona bonis, aut reb⁹ ſuis, non inferatis, ſeu quantum in vobis eſt ab aliis inferri permittatis injuriam, moleſtiam, &c. aut gravam̄. Sed eum potius ſalvum & ſecur' conductum cum per loca, paſſus, ſeu diſtrict⁹ veſtros tranſierit, & ſup' hoc requiſiti fueritis, ſuis ſumptib' habere faciatis. Et ſi quid eis forisfact' fuerit, &c. reformari faciatis. In cujus, &c. per tres annos duratur'. T. &c. And certainly this was, when Lyons in France (bordering upon Burgundy, an auncient friend to England) was under the actual obedience of King Henry the 6. For the King commanded fidelibus ſuis, his faithful Magiſtrates there, that

that if any injury were there done, it ſhould be by them reformed and redreſſed, and that they ſhould protect the party in his perſon and goods in peace. In the Regiſter, fo. 26. two other writs. Rex omnib⁹ ſeneſchallis, majorib⁹, juratis, paribus, præpoſitis, ballivis & fidelib⁹ ſuis in ducatu Acquitaniæ ad quos, &c. ſalutem. Quia dilecti nobis T. & A. cives civitatis Burdegaliæ coram nobis in Cancellaria noſtra Angl' & Aquitaniæ jura ſua proſequentes, & metuentes ex veriſimilib⁹ conjecturis per quoſdã ſibi comminantes tã in corpore quã in reb⁹ ſuis, ſibi poſſe grave damnum inferri, ſupplicaverunt nobis ſibi de protectione regia providere: nos volentes dictos T. & A. ab oppreſſionib⁹ indebitis præſervare, ſuſcepim⁹ ipſos T. & A. res ac juſtas poſſeſſiones & bona ſua quæcunq; in protectionem & ſalvam gardiã noſtram ſpecialem. Et vobis & cuilibet veſtr' injungim⁹ & mandam⁹, quod ipſo T. & A. familias, res ac bona ſua quæcunq; à violentiis & gravaminib⁹ indebitis defendatis, & ipſos injuſtis poſſeſſionib⁹ ſuis manuteneatis. Et ſi quid in præjudicium hujus protectionis & ſalvæ gardiæ noſtræ attentatum inveneritis ad ſtat' debitum reducatis. Et ne quis ſe poſſit per ignorantiã excuſare, præſentẽ protectionem & ſalvam gardiã nr̃am faciatis in locis de quib⁹ requiſiti fueritis infra diſtrict' veſtr̃, publicè intimari, inhibẽtes omnib⁹ & ſingulis ſub pœnis gravib⁹, ne dictis A. & T. ſeu famulis ſuis in perſonis ſeu reb⁹ ſuis, injuriam, moleſtiam, damnum aliquod inferant, ſeu gravam̃; & penocellas noſtras in locis & bonis ipſor' T. & A. in ſignum protectionis & ſalvæ gardiæ memoratæ, cum ſuper hoc requiſiti fueritis, apponatis. In cuj⁹, &c. Dat' in palatio noſtro Weſt. ſub magni ſigilli teſtimonio, ſexto die Aug. anno 44 E. 3. Rex univerſis & ſingulis ſeneſchallis cõſtabulariis, caſtellanis p̃poſitis, miniſtris, & omnib⁹ ballivis & fidelib⁹ ſuis in dominio nr̃o Aquitaniæ conſtituis ad quos, &c. Salutẽ. Volentes G. & R. uxorem ejus favore proſequi gratioſè: ipſos G. & R. homines & familias ſuas, ac juſtas poſſeſſiones, & bona ſua quæcunq; ſuſcepim⁹ in protectionẽ & defenſionem noſtram, necnon in ſalvam gardiã noſtram ſpecialẽ. Et ideo vobis & cuilibet veſtr' injungim⁹ & mandam⁹, quod ipſos G. & R. eorum homines, familias ſuas, ac juſtas poſſeſſiones & bona ſua quæcunq; manuteneatis, protegatis, & defendatis: non inferentes eis ſeu quantum in vob̃ eſt ab aliis inferri p̃mittentes, injuriã moleſtiã, damn', violentiã, impediñtum aliquod ſeu gravam̃. Et ſi quid eis forisfact', injuriat', vel contra eos indebite attentat' fuerit, id eis ſine dilatione corrigi, & ad ſtatum debit' reduci faciatis, prout ad uos & quemlibet veſtrum noveritis pertinere: penocellas ſup' domib⁹ ſuis in ſignum præſentis ſalvæ gardiæ noſtræ (prout moris fuerit) facientes. In cujus, &c. per unum annum duraturũ. T. &c.

By all which it is manifeſt, that the protection and government of the King is general over all his Dominions and Kingdoms, as well in time of Peace by Juſtice, as in time of War by the Sword, and that all be at his command, and under his obedience. Now ſeeing power and protection draweth ligeance, it followeth, that ſeeing the Kings Power, Command, and Protection extendeth out of England, that ligeance cannot be local, or confined within the bounds thereof. He that is abjured the Realm, Qui abjurat regnum amittit regnum; ſed non regem, amittit patriam, ſed non patrem patriæ: For notwithſtanding the abjuration, he oweth the King his ligeance, and he remaineth within the Kings protection; for the King may pardon and reſtore him to his Country again. So as ſeeing that ligeance is a quality of the mind, and not confined within any place; it followeth, that the plea that doth confine the ligeance of the Plaintiff to the Kingdom of Scotland, Infra ligeantiã Regis Regni ſui Scotiæ, & extra ligeantiã Regis Regni ſui Angliæ, whereby the Defendants do make one local ligeance for the natural Subjects of England, and another local ligeance for the natural Subjects of Scotland, is utterly unſufficient, and againſt the nature and quality of natural ligeance, as often it hath been ſaid. And Coke, Chief Juſtice of the Court of Common-pleas, cited a ruled caſe out of Hinghams Reports, Tempore E. 1. which in his argument he ſhewed in Court written in Parchment, in an auncient hand of that time. Conſtance de N. brought a Writ of Ayel againſt Roger de Cobledike, and others, named in the Writ, and counted, that from the ſeiſin of Roger her Grandfather it diſcended to Gilbert his Son, and from Gilbert to Conſtance, as Daughter and Heir. Sutton dit, Sir, el ne doit eſtre reſponde, pur ceo que el eſt Francois & nient de la ligeãce ne a la foy Dengliterre, & demand judgment ſi el doit action aver: That is, ſhe is not to be anſwered, for that ſhe is a Frenchwoman, and not of the ligeance nor of the faith of England, and demand judgment, if ſhe this action ought to have. Bereford (then Chief Juſtice of the Court of Common-pleas) by the Rule of the Court diſalloweth the Plea, for that it was too ſhort, in that it referred ligeance and faith to England, and not to the King: And thereupon Sutton ſaith as followeth: Sir, nous voilom⁹ averre q̃ el neſt my de la ligeance Dengliterre, ne a la foy le Roy & demand judgment, & ſi vous agardes que el doit eſtre reſpond', nous dirromus aſſes: That is, Sir we will aver, that ſhe is not of the legeance of England, nor of the faith of the King, and demand judgment, &c.

Cawly 139.

Cobledike's Caſe temps R. 1. reported by *Hingham.*

Elleſmeres Poſtnati 91, 92.

Whitby

(Which later words of the plea (nor of the faith of the King) reserved faith to the King indefinitely and generally, and restrained not the same to England, and thereupon the plea was allowed for good, according to the rule of the Court; for the Book saith, that afterward the Plaintiff desired leave to depart from her Writ. The rule of that case of Cobledike did (as Coke chief Justice said) overrule this case of Calvin, in the very point now in question; for that the Plea in this case doth not refer faith or ligeance to the King indefinitely and generally, but limiteth and restraineth faith and ligeance to the Kingdom: Extra ligeantiam Regis regni sui Angliæ, out of the ligeance of the King of his kingdom of England: Which afterwards the L. Chancelor and the chief Justice of the Kings Bench, having copies of the said ancient Report, affirmed in their arguments. So as this point was thus concluded, Quod ligeantia naturalis nullis claustris coercetur, nullis metis refrænatur, nullis finibus premitur.

To whom and how ligeance is due.
(a) Apres 12. a. Co. Lit. 43. a. 5 Co. 27. a. Plowd. 213. a. 221. a. 364. b. 26 Ass. 54. Firz. Enfant 15. Br. Age 34.

¶ 4 & 5. By that which hath been said it appeareth, that this ligeance is due only to the King; so as therein the question is not now, cui, sed quomodo debetur. It is true, that the King hath two capacities in him: one a natural body, being discended of the blood royal of the Realm; and this body is of the creation of almighty God, and is subject to death, infirmity, and such like: The other is a politick body or capacity, so called, because it is framed by the policy of man (and in 21 E. 4. 39. b. is called a mystical Body;) and in this capacity the King is esteemed to be immortal, invisible, not subject to death, infirmity, infancy, (a) nonage, &c. Vide Pl. Com. in le case de Seignior Barkley 238. & in le case del Duchy 213. Vide 6 E. 3. 291. & 26 Ass. pl. 54. Now seeing the King hath but one person, and several capacities, and one politick capacity for the Realm of England, and another for the Realm of Scotland, it is necessary to be considered, to which capacity ligeance is due. And it was resolved, that it was due to the natural person of the King (which is ever accompanied with the politick capacity, and the politick capacity as it were appropriated to the natural capacity) and is not due to the politick capacity only, that is, to his Crown or Kingdom, distinct from his natural capacity, and that for divers reasons: First, Every subject (as it hath been affirmed by those that argued against the Plaint) is presumed by Law to be sworn to the King, which is to his natural person, and likewise the King is sworn to his subject (as it appeareth in Bracton lib. 3. de actionibus, cap. 9. fol. 107.) which Oath he taketh in his natural person:

perſon: For the politick capacity is inviſible and immortal; nay, the politick body hath no ſoul, for it is framed by the policy of man. 2. In all indictments of Treaſon, when any do intend or compaſs mortem & deſtruct' domini Regis) which muſt needs be underſtood of his natural body, for his politick body is immortal, and not ſubject to death) the indictment concludeth, contra(a) ligeantiæ ſuæ debitum, ergo the ligeance is due to the natural body. Vide Fitz Juſt. of Peace 53. & Plo. Com. 384. in the Earl of Leiceſter's Caſe. 3. It is true, that the King in genere dieth not, but, no queſtion, in individuo he dieth: As for example, H. 8. E. 6. &c. and Q Elizabeth died, otherwiſe you ſhould have many Kings at once. In 2 & 3 Ph. & Ma. Dy. 128. one(b) Conſtable diſperſed divers bills in the ſtreets in the night, in which was written, that King Ed 6. was alive, and in France, &c. and in Colman ſtreet in London he pointed to a young man, and ſaid that he was King Edward the ſixth. And this being ſpoken de individuo (and accompanied with other circumſtances) was reſolved to be high Treaſon: for the which Conſtable was attainted and executed. 4. A(c) body politick (being inviſible) can as a body politick neither make or take homage. Vide 33 H. 8. tit. Fealty, Brooke 155. In fide, in faith or ligeance nothing ought to be feigned, but ought to be ex fide non ficta. 6. The King holdeth the kingdom of England by birthright inherent, by diſcent from the blood Royal, whereupon ſucceſſion doth attend; and therefore it is uſually ſaid to the King, his heirs and ſucceſſors, wherein heirs is firſt named, and ſucceſſor is attendant upon heirs. And yet in our ancient Books, ſucceſſion and ſucceſſor are taken for hereditance and heirs. Bracton lib. 2. de acquirendo rerum dominio, cap. 29. Et ſciendum eſt, quod hæreditas eſt ſucceſſio in univerſum jus quod defunctus anteſſor habuit, ex quacunque cauſa acquiſitionis vel ſucceſſionis, & alibi affinitatis jure nulla ſucceſſio permittitur. But the title is by diſcent; by Q. Elizabeths death the Crown and Kingdom of England diſcended to his Majeſty, and he was fully and abſolutely thereby King, without any eſſential ceremony or act to be done ex poſt facto: for coronation is but a royal ornament and ſolemnization of the royal diſcent, but no part of the title. In the firſt year of his Majeſty's reign, before his Majeſty's coronation, Watſon(d) and Clarke, ſeminary Prieſts and others were of opinion, that his Majeſty was no compleat and abſolute King before his coronation, but that coronation did add a confirmation and perfection to the diſcent: And therefore (obſerve their damnable and damned conſequent) that they by ſtrength

(a) Devant 6. a. b. 3 Inſt. 11. Hob. 71. Dyer 145. pl 62. Cawly 185. Co. Lit. 129. a.

(b) Ceſt Caſe eſt in le liure alargemes eſt en l'Abridgment de *Dyer*, fo. 32. *Stow's* Abridgment p. 1062. 1064. *Spred's* Chron. p. 1127. col. 2. num. 100.

(c) 10 Co. 32. b. Co. Lit. 66. b. 4 Co. 11. a.

(d) 3 Inſt. 7.

ſtrength and power might before his coronation take him and his royal iſſue into their poſſeſſion, keep him priſoner in the Tower, remove ſuch Counſellors and great Officers as pleaſed them, and conſtitute others in their places, &c. and that theſe and others of like nature could not be Treaſon againſt his Majeſty, before he were a crowned King. But it was clearly reſolved by all the Judges of England, that preſently by the diſcent his Majeſty was compleatly and abſolutely King, without any eſſential ceremony or act to be done ex poſt facto, and that (a) coronation was but a royal ornament, and outward ſolemnizatiõ of the diſcent. And this appeareth evidently by infinite Preſidents and Book caſes, as (taking one example in a caſe ſo cléer for all) King Henry the ſixth was not crowned until the eighth year of his reign, and yet divers men before his coronation were attainted of Treaſon, of Felony, &c. and he was as abſolute and compleat a King, both for matters of judicature, as for graunts, &c. before his coronation, as he was after, as it appeareth in the Reports of the 1, 2, 3, 4, 5, 6 and 7th years of the ſame King. And the like might be produced for many other Kings of this Realm, which for brevity in a caſe ſo cléer I omit. By which it manifeſtly appeareth, that by the Laws of England there can be no interregnum within the ſame. If the King be ſeiſed of Land by a defeaſible title, and dieth ſeiſed, this diſcent ſhall toll the entry of him that right hath, as it appeareth by 9 (b) E. 4. 51. But if the next King had it by ſucceſſion, that ſhould take away no entry, as it appeareth by Littl. fo. 97. If a diſſeiſor of an infant convey the land to the King, who dieth ſeiſed, this diſcent taketh away the entry of the Infant, as it is ſaid in 34 H. 6. fo. 34. (c) 45 lib. Aſſ. pl. 6. Plow. Com. 234. where the caſe was, that King H. 3. gave a Manor to his Brother the Earl of Cornwal in tail (at what time the ſame was a fée ſimple conditional) King H. 3. died, the Earl before the Statute of Donis condition' (having no iſſue) by déed exchanged the Manor with warranty for other lands in fée, and died without iſſue, and the warranty and aſſets deſcended upon his nephew K. Edward the firſt: and it was adjudged, that this warranty and aſſets, which diſcended upon the natural perſon of the King, barred him of the poſſibility of reverter. In the reign of Ed. 2. the Spencers, the father and the ſon, to cover the Treaſon hatched in their hearts, invented this damnable and damned opinion, That homage and oath of ligeance was more by reaſon of the Kings Crown (that is, of his politick capacity) than by reaſon of the perſon of the King

(a) 3 Inſt. 7.

(b) 4 Co. 58. b.

(c) 10 Co. 96. b. Co. Lit. 19. b. 370. b. Plowd. 234. a. 553. b. Fitz. Garranty 68. Br. Aſſets per diſcent 31. Br. Tail 34. Br. Prærog' 52. Br. Serch pur le Roy 5. Br. Garranty 52. 9 Co. 132. b.

King, upon which opinion they inferred erectable and deteſtable conſequents: 1. If the King do not demean himſelf by reaſon in the right of his Crown, his Lieges are bound by oath to remove the King: 2. Seeing that the King could not be reformed by ſute of Law, that ought to be done per aſpectee: 3. That his Lieges be bound to govern in aid of him, and in default of him. All which were condemned by two Parliaments, one in the reign of E. 2. called exilium Hugonis le Spencer, and the other in Anno 1 E. 3. cap. 1. Bracton lib. 2. de acquirendo rerum dominio, cap. 24. fo. 55. ſayth thus: Eſt enim corona Regis facere juſtitiam & judicium, & tenere pacē, & ſine quibus corona conſiſtere non poteſt nec teneri; hujuſmodi autem jura ſive juriſdictiones ad perſonas vel tenem' transferri non poterunt, nec à privata perſona poſſideri, nec uſus nec executio juris, niſi hoc dat' fuit ei deſuper, ſicut juriſdictio delegata delegari non poterit quin ordinar' reman' cum ipſo Rege. Et libro 3. de actionib⁹, c. 9. fo. 107. Separare autem debet Rex, cum ſit Dei vicarius in terra, jus ab injuria, æquum ab iniquo, ut omnes ſibi ſubjecti honeſtè vivant, & qd' nullus alium lædat & q̄d unicuiq; q̄d ſuū fuerit recta contribut' reddatur. In reſpect whereof one ſaith, That Corona eſt quaſi cor ornans, cujus ornamenta ſunt miſericordia & Juſtitia. And therefore a Kings Crown is an Hieroglyphick of the Laws, where Juſtice, &c. is adminiſtred: for ſo ſaith P. Val. lib. 41. pag. 400. Coronam dicimus legis judicium eſſe, propterea qd' certis eſt vinculis complicata, quibus vita noſtra veluti religata coercetur. Therefore if you take that which is ſignified by the Crown, that is, to do juſtice and judgment, to maintain the peace of the Land, &c. to ſeparate right from wrong, and the good from the ill, that is to be underſtood of that capacity, of the King, that in rei veritate hath capacity, and is adorned and endued with endowments, as well of the ſoul as of the body, and thereby able to do juſtice and judgment, according to right and equity, and to maintain the peace, &c. and to find out and diſcern the truth, and not of the individible and immortal capacity that hath no ſuch endowments, for of it ſelf it hath neither ſoul nor body. And where divers Books and Acts of Parliament ſpeak of the ligeance of England, as 31 E. 3. tit. Coſinage 5. 42 E. 3. 2. 13 E. 3. tit. Bre 677. 25 E. 3. ſtatuto 2. de natis ultra mare; All theſe and other ſpeaking briefly in a vulgar manner (for (a) loquendum ut vulgus) and not pleading (for ſentiendum ut docti) are to be underſtood of the ligeance due by the people of England to the King: For no man will affirm, that England it ſelf, taking it for the Continent thereof, doth owe any

Pryn's Sovereign power of Parliam. 2 Part, pag. 43.

Cro. Arg. 64.

(a) 3 Keb. 20. Cart. 120. 2 Roll. Rep. 239. Hetl. 101. 4 Co. 46. b.

any ligeance or faith, or that any faith or ligeance should be due to it; but it manifestly appeareth, that the ligeance or faith of the Subject is proprium quarto modo to the King, omni, soli, & semper. And oftentimes in the Reports of our Book Cases, and in Acts of Parliament also, the Crown or Kingdom is taken for the King himself, as in Fitz. Nat. Bre. fol. 5. tenure in capite is a tenure of the Crown, and is a Seignory in gross, that is, of the person of the King, and so is 30 H. 8. Dyer, fo. 44, 45. A Tenure in chief, as of the Crown, is meerly a tenure of the person of the King, and therewith agreeth 28 H. 8. tit. Tenure, Br. 65. The Statute of 4 H. 5. cap. ultimo gave Priors aliens, which were conventual to the King and his heirs; by which gift saith 34 H. 6. 34. the same were annexed to the Crown. And in the said Act of 25 E. 3. whereas it is said in the beginning, within the ligeance of England, it is twice afterward said in the same Act within the ligeance of the King, and yet all one ligeance due to the King. So in 42 Ed. 3. fo. 2. where it is first said, the ligeance of England, it is afterward in the same case called, the ligeance of the King; wherein though they used several manner and phrases of speech, yet they intended one and the same ligeance. So in our usual Commissions of Assise, of Gaol delivery, of Oyer and Terminer, of the Peace, &c. power is given to execute justice secundum legem & consuetudinem regni nostri Angliæ: And yet Littl. lib. 2. in his Chapter of Villenage, fo. 43 b. in disabling of a man that is attainted in a Præmunire, saith, That the same is the King's Law; and so doth the Register in the Writ of ad jura regia style the same.

The reasons and causes wherefore by the policy of the Law the King is a Body politick, are three, viz. 1. Causa Majestatis 2. Causa necessitatis; and 3. Causa utilitatis. First, Causa Majestatis, the King cannot give or take but by matter of Record for the dignity of his person. Secondly, Causa necessitatis, as to avoid the (a) attainder of him that hath right to the Crown, as it appeareth in 1 H. 7. 4 b. lest in the interim there should be an (b) Interregnum, which the Law will not suffer. Also by force of this politick capacity, though the (c) King be within age, yet may he make Leases and other Grants, and the same shall bind him, otherwise his Revenue should decay, and the King should not be able to reward service, &c. Lastly, Causa utilitatis, as when lands and possessions discend from his collateral Ancestors, being Subjects, as from the Earl of

The Reasons wherefore the King by judgment of Law hath a Politick capacity.

(a) Co. Lit. 16. a. Bacon's Hen. 7. fo. 8, 9. Fitz. Parl. 2. Br. Parl. 37, 105. Plowd. 238. b.

(b) 1 W. & M. cap. 4. sect. 10. Co. Lit. 43. a.

(c) 5 Co. 27. a. 1 Roll. 728. Plowd. 213. a. 221. a. 364. b. 26 Ass. 54. Fitz. Enfant 15. Br. Age 34.

of March,&c. to the King, now is the King ſeiſed of the ſame in jure coronæ in his politick capacity; for which cauſe the ſame ſhall go with the Crown; and therefore, albeit Queen Elizabeth
Co.Lit. 15.b. was of the half blood to Queen Mary, yet ſhe in her Body politick enjoyed all thoſe fee ſimple Lands, as by the Law ſhe ought, and no collateral couſin of the whole Blood to Queen Mary ought to have the ſame. And theſe are the cauſes wherefore by the policy of the Law the King is made a Body politick: So as for theſe ſpecial purpoſes the Law makes him a Body politick, immortal and inviſible, whereunto our ligeance cannot appertain. But to conclude this Point, our ligeance is due to our natural liege Sovereign, deſcended of the Blood royal of the Kings of this Realm. And thus much of the firſt general part de Ligeantia.

De Legibus. The ſecond General part.

Now followeth the ſecond part, de Legibus, wherein theſe parts were conſidered: Firſt, That the ligeance or faith of the Subject is due unto the King by the Law of Nature: Secondly, That the Law of Nature is part of the Law of England: Thirdly, That the Law of Nature was before any judicial or municipal Law: Fourthly, That the Law of Nature is immutable.

The Law of Nature. *Wing.* Max. 1.

The Law of Nature is that which God at the time of creation of the nature of man infuſed into his heart, for his preſervation and direction; and this is Lex æterna, the Moral Law,
Co.Lit. 11.b. called alſo the Law of Nature; and by this Law, written with the Finger of God in the heart of man, were the people of God a long time governed, before that Law was written by Moſes, who was the firſt Reporter or Writer of Law in the world. The Apoſtle in the ſecond Chapter to the Romans ſaith, Cum enim gentes quæ legem non habent naturaliter ea quæ leges ſunt faciunt. And this is within that commandment of the Moral Law, honora patrem; which doubtleſs doth extend to him that is Pater patriæ. And the Apoſtle ſaith, Omnis anima poteſtatibus ſublimioribus ſubdita ſit. And theſe be the words of the great Divine, Hoc Deus in ſacris Scripturis jubet, hoc lex naturæ dictat, ut quilibet ſubditus obediat ſuperiori. And Ariſtotle, Natures Secretary, Lib. 5. Æthicorum ſaith, That jus naturale eſt, quod apud omnes homines eandem habet potentiam. And herewith do agrée Bracton lib. 1. cap. 5. and Forteſcue, cap. 8, 12, 13 & 16. Doctor & Student, cap. 2 & 4. And the reaſon hereof is, for that God and Nature is one

to

to all, and therefore the law of God and Nature is one to all. By this law of Nature is the faith, ligeance and obedience of the ſubject due to his ſovereign or ſuperior. And Ariſtotle 1. Politicorum proveth, that to command and to obey is of nature, and that Magiſtracy is of nature: For whatſoever is neceſſary and profitable for the preſervation of the ſociety of man, is due by the law of Nature: But Magiſtracy and Government are neceſſary and profitable for the preſervation of the ſociety of Man; therefore Magiſtracy and Government are of Nature. And herewith accordeth Tully lib. 3. de Legibus, Sine imperio nec domus ulla, nec civitas, nec gens, nec hominum univerſum genus ſtare, nec ipſe denique mundus poteſt. This law of Nature, which indeed is the eternal Law of the Creator, infuſed into the heart of the Creature at the time of his creation, was 2000 years before any Law written, and before any judicial or municipal Laws. And certain it is, that before judicial or municipal Laws were made, Kings did decide cauſes according to natural equity, and were not tyed to any rule or formality of law, but did dare jura. And this appeareth by Forteſcue cap. 12 & 13. and by Virgil, that Philoſophical Poet, 7 Ænead: Aprei 25.2:

Hoc Priami geſtamen erat, cum jura vocatis
More daret populis———.

And 5 Ænead:

———Gaudet regno Trojanus Aceſtes,
Indicitque forum & patribus dat jura vocatis.

And Pomponius lib. 2. cap. de origine juris, affirmeth, that in Tarquinius Superbus time, there was no Civil law written, and that Papirius reduced certain obſervations into writing, which was called Jus civile Papirianum. Now the reaſon wherefore Laws were made and publiſhed, appeareth in Forteſcue cap. 13. and in Tully lib. 2. Officiorum: At cum jus æquabile ab uno viro homines non conſequerentur, inventæ ſunt leges. Now it appeareth by demonſtrative reaſon, that ligeance, faith and obedience of the ſubject to the Sovereign, was before any municipal or judicial Laws: 1. For that government and ſubjection were long before any municipal or judicial Laws: 2. For that it had been in vain to have preſcribed Laws to any, but to ſuch as ought obedience, faith and ligeance before, in reſpect whereof they were bound to obey and obſerve them: Fruſtra enim

ſeruntur leges niſi ſubditis & obedientibus. Seeing then that faith, obedience and ligeance, are due by the law of nature, it followeth that the ſame cannot be changed or taken away: For albeit judicial or municipal Laws have inflicted and impoſed in ſeveral places, or at ſeveral times, divers and ſeveral puniſhments and penalties for breach or not obſervance of the law of Nature (for that law only conſiſted in commanding or prohibiting without any certain puniſhment or penalty) yet the very law of Nature it ſelf, never was nor could be (a) altered or changed. And therefore it is certainly true, that (b) Jura naturalia ſunt immutabilia. And herewith agreeth Bracton lib. 1. cap. 5. and Doctor and Student cap. 5 & 6. And this appeareth plainly and plentifully in our Books.

(a) Dr. & Stud. 4. a.
(b) Cart. 130.

If a man hath a Ward by reaſon of a Seigniory, and is outlawed, he forfeiteth the Wardſhip to the King: but if a man hath the wardſhip of his own ſon or daughter, which is his heir apparent, and is outlawed, he doth not (c) forfeit this wardſhip; for nature hath annexed it to the perſon of the father, as it appeareth in 33 H. 6. 55. b. & bonus Rex nihil à bono patre differt, & patria dicitur à patre, quiâ habet communem patrem, qui eſt pater patriæ. In the ſame manner, maris & fœminæ conjunctio eſt de jure naturæ, as Bracton in the ſame Book and Chapter, and St. Germin in his book of the Dr. and Stud. cap. 5. do hold. Now if he that is attainted of Treaſon or Felony, be ſlain by one that hath no authority, or executed by him that hath authority, but purſueth not his warrant, in this caſe his eldeſt Son can have no appeal, for he muſt bring his appeal as heir, which being ex proviſione hominis, he loſeth it by the attainder of his father: but his (d) wife (if any he have) ſhall have an appeal, becauſe ſhe is to have her appeal as wife, which ſhe remaineth notwithſtanding the attainder, becauſe maris & fœminæ conjunctio is de jure naturæ, and therefore (it being to be intended of true and right matrimony) is indiſſoluble: And this is proved by the Book in 35 H. 6. fo. 57. So if there be mother and daughter, and the daughter is attainted of felony, now cannot ſhe be heir to her mother, for the cauſe aforeſaid, yet after her attainder, if ſhe killeth her mother, this is parricide and petit treaſon; for yet ſhe remaineth her daughter, for that is of nature: and herewith agreeth 21 E. 3. 17. b. If a man be attainted of Felony or Treaſon, he hath loſt the Kings legal protection, for he is thereby utterly diſabled to ſue any action real or perſonal (which is a greater diſability than an alien in league hath) and yet ſuch a perſon ſo attainted hath not loſt that

(c) 3 Co. 39. a. 7 Co. 12. b. Co. Lit. 84. b. Br. Gard 6. Br. Forfeiture 70. Plowd. 294. a. *Englefield's* Caſe. 2 Inſt. 234.

(d) Stamf. Cor. 59. c. 35 H. 6. 58. a. Br. Appeal 5, 131. Fitz. Corone 21. 2 Inſt. 215.

protecti-

protection which by the law of Nature is given to the King, for that is indelibilis & immutabilis; and therefore the King may protect and pardon him, and if any man kill him without warrant, he shall be punished by law as a manslayer; and thereunto accordeth 4 E.4. and 35 H.6.57. 2 Ass.pl.3. By the Stat of 25 Ed.3.c.22. a man attainted in a Præmunire, is by express words out of the Kings protection generally; and yet this extendeth only to legal protection, as it appeareth by Litt.fo.43. for the Parliament could not take away that protection which the law of Nature giveth unto him; and therefore notwithstanding that statute the King may protect and pardon him. And though by that statute it was further enacted, That it should be done with him as with an enemy, by which words any man might have slain such a person (as it is holden in 24 H.8.tit.Coron.Br.197.) until the statute made an' 5 El.c.1. yet the King might protect and pardn him. A man outlawed is out of the benefit of the municipal law: For so saith F.N.B.161.a. Utlagatus est quasi extra legem positus: And Bract.lib.3.tract.2.c.11. saith, that caput gerit lupinum; yet is he not out either of his natural ligeance, or of the Kings natural protection, for neither of them is tyed to municipal laws, but is due by the law of Nature, which (as it hath bẽn said) was long before any judicial or municipal laws. And therefore if a man were outlawed for felony, yet was he within the Kings natural protection, for no man but the Sheriff could execute him, as it is adjudged in 2 lib.Ass.pl.3. Every subject is by his natural ligeance bound to obey and serve his Sovereign, &c. It is enacted by the Parliament of 23 H.6. that no man should serve the King as Sheriff of any County above one year, and that, notwithstanding any clause of non obstante, to the contrary, that is to say, notwithstanding that the King should expressly dispense with the said Statute: Howbeit it is agréed in 2 H.7. that against the express purview of that Act, the King may by a special non obstante dispence with that Act; for that the Act could not bar the King of the service of his subject, which the law of Nature did give unto him. By these and many other cases that might be cited out of our Books it appeareth, how plentiful the authorities of our laws be in this matter. Wherefore to conclude this point (and to exclude all that hath bẽn or could be objected against it) if the obedience and ligeance of the subject to his Sovereign, be due by the law of Nature, if that law be parcel of the laws as well of England, as of all other Nations, and is immutable, and that Postnati and we of England are united by birthright

Cawly 47.

3 Inst.126.

Co.Lit.130.a.

B.N.C.53.
Co.Lit.130.a.
2 Bulstr.299.
Cawly 46,47.

Co.Lit.128.b.

Br.Corone 67.

23 H.6.cap.8.

Plowd.502.b.
2 H.7.6.b.
Br.Patents 109
12 Co.18.

in obedience & ligeance (which is the true cauſe of natural ſubjection) by the law of Nature. It followeth that Calvin the Plaintiff being born under one ligeance to one King, cannot be an alien born; and there is great reaſon, that the law of Nature ſhould direct this caſe, wherein five natural operations are remarkable: Firſt, The King hath the Crown of England by birthright, being naturally procreated of the blood Royal of this Realm: Secondly, Calvin the Plaintiff naturalized by procreation and birthright, ſince the diſcent of the Crown of England: Thirdly, Ligeance and obedience of the ſubject to the Sovereign, due by the law of Nature: Fourthly, Protection and government due by the law of Nature: Fifthly, This caſe in the opinion of divers was more doubtful in the beginning, but the further it proceeded, the cleerer and ſtronger it grew; and therefore the doubt grew from ſome violent paſſion, and not from any reaſon grounded upon the law of Nature, quia quanto magis violentus motus (qui ſit contra naturam) appropinquat ad ſuum finem, tanto debiliores & tardiores ſunt ejus motus; ſed naturalis motus, quanto magis appropinquat ad ſuum finem, tanto fortiores & velociores ſunt ejus motus. Hereby it appeareth how weak the objection grounded upon the rule of (a) Quando duo jura concurrunt in una perſona, &c. is: For that rule holdeth not in perſonal things, that is, when two perſons are neceſſarily and inevitably required by law (as in the caſe of an alien born there is:) and therefore no man will ſay, that now the King of England can make war or league with the King of Scotland, & ſic de cæteris. And ſo in caſe of an alien born, you muſt of neceſſity have two ſeveral ligeances to two ſeveral perſons. And to conclude this point concerning laws, Non adverſatur diverſitas regnorum ſed regnantium, non patriarum ſed patrum patriarum, non coronarum ſed coronatorum, non legum municipalium ſed regum majeſtatum. And therefore thus were directly and cleerly anſwered, as well the objections drawn from the ſeveralty of the Kingdoms, ſeeing there is but one head of both, and the Poſtnati and us joyned in ligeance to that one head, which is copula & tanquam oculus of this caſe, as alſo the diſtinction of the laws, ſeeing that ligeance of the ſubjects of both Kingdoms, is due to their Sovereign by one law, and that is the law of Nature.

(a) *Elleſmere's* Poſtnat', c 88 4 Co. 118. a. Cawly 209. Devant 2 b. Moor 793, 804.

The Third General part, concerning both Kingdoms.

For the third, It is firſt to be underſtood, that as the Law hath wrought four unions, ſo the Law doth ſtill make four ſeparations. The firſt union is of both Kingdoms under one natural liege ſovereign King, and ſo acknowledged by the Act of Parlia-

Parliament of recognition. The second is an union of ligeance and obedience of the subjects of both Kingdoms, due by the law of Nature to their Sovereign: And this union doth suffice to rule and overrule the case in question; and this in substance is but a uniting the hearts of the subjects of both kingdoms one to another, under one head and sovereign. The third union is an union of protection of both kingdoms, equally belonging to the subjects of either of them: And therefore the two first Arguments or Objections drawn from two supposed several ligeances, were fallacious, for they did disjungere conjungenda. The fourth union and conjunction is, of the three Lyons of England and that one of Scotland, united and quartered in one escucheon.

Concerning the separations yet remaining: First, England and Scotland remain several and distinct Kingdoms. 2. They are governed by several judicial or municipal Laws. 3. They have several distinct and separate Parliaments. 4. Each Kingdom hath several Nobilities: For albeit a Postnatus in Scotland, or any of his posterity, be the Heir of a Noble man of Scotland, and by his birth is legitimated in England, yet he is none of the (a) Peers or Nobility of England; for his natural ligeance and obedience, due by the law of Nature, maketh him a subject, and no alien within England: But that subjection maketh him not noble within England, for that Nobility had his original by the King's creation, and not of Nature. And this is manifested by express authorities, grounded upon excellent Reasons in our Books. If a Baron, Vicount, Earl, Marques or Duke of England, bring any action real or personal, and the Defendant pleadeth in abatement of the Writ, that he is no Baron, Vicount, Earl, &c. and thereupon the Demandant or Plaintiff taketh issue; this issue shall not by tryed by Jury, but by the (b) Record of Parliament, whether he or his ancestor, whose Heir he is, were called to serve there as a Peer, and one of the Nobility of the Realm. And so are our Books adjudged in 22 Ass. 24. 48 E. 3. 30. 35 H. 6. 40. 20 Eliz. Dyer 360. Vide in the 6th part of my Reports, in the Countess of Rutland's Case. So as the man, that is not de jure a Peer, or one of the Nobility, to serve in the Upper house of the Parliament of England, is not in the legal proceedings of law accounted Noble within England. And therefore if a Countee of France or Spain, or any other foreign Kingdom, should come into England, he should not here sue, or be sued, by the name of Countee, &c. for that he is none of the Nobles, that are Members of the

(a) Dyer 360. pl. 6. 9 Co. 117. a b 2 Inst. 48.

(b) Co. Lit. 16. b. 6 Co. 53. a. 9 Co. 31. a. 49. a. 12 Co. 70, 94, 95. 2 Inst. 50. 2 Roll 575. Moor 767.

upper houſe of the Parliament of England; and herewith agree the book Caſes of (a)20 Ed.4.6.a.b and 11 Ed.3.tit.Bre.473. Like Law it is, and for the ſame reaſon, of an Earl or Baron of Ireland; he is not any Peer, or of the Nobility of this Realm: And herewith agreeth the Book in 8 R.2.tit.(b)Proces pl.ult. where in an action of Debt proceſs of Outlawry was awarded againſt the Earl of Ormond in Ireland, which ought not to have been, if he had been noble here. Vide Dyer(c)20 El.360.

(a)9 Co.117.b. Br.Noſme de dignity 49.

(b)9 Co.117.b. Fitz.Proceſs 224.

(c)Dyer 360.pl.6. Co.Lit.261.b.

But yet there is a diverſity in our Books worthy of obſervation, for the higheſt and loweſt dignities are univerſal; for if a King of a foreign Nation come into England, by the leave of the King of this Realm (as it ought to be) in this caſe he ſhall ſue and be ſued by the name of a King; and herewith agreeth 11 E.3.tit.Briefs(d)473. where the caſe was, That Alice, which was the wife of R.de O. brought a writ of Dower againſt John Earl of Richmond, and the Writ was, Præcipe Johan' Com' Richm' cuſtodi terræ & hæredis of William the Son of R.de O. the tenant pleaded, That he is Duke of Britain, not named Duke, judgment of the Writ? But it is ruled, that the Writ was good, for that the Dukedom of Britain was not within the Realm of England. But there it is ſaid, that if a man bring a writ againſt Edward(e)Baliol, and name him not King of Scotland, the writ ſhall abate for the cauſe aforeſaid. And hereof there is a notable preſident in Fleta lib.2.cap.14. where, treating of the juriſdiction of the Kings Court of Marſhalſey, it is ſaid, Et hæc omnia ex officio ſuo licitè facere poterit (s.Seneſchallus aulæ hoſpic' Regis) non obſtante alicujus libertate, etiam in alieno regno dum tamen reus in hoſpitio Regis poterit inveniri, ſecundum q̃d con tigit Pariſ. an' 14 Ed.1. de Engelramo de Nogent capto in hoſpit' Regis Angl' (ipſo rege tunc apud Pariſiam exiſtente) cum diſcis argenti furatis recenter ſuper facto rege Franciæ tunc præſente, & unde licet Cur' Regis Franciæ de præd' latrone per caſtellanum Pariſ petita fuerit, habitis hic & inde tractatibus, in conſilio Regis Franc' tandē conſid' fuit, q̃d Rex Angliæ illa regia prærogativa & hoſpitij ſui privilegio uteret' & gauderet, qui coram Roberto Fitz-John milite tunc hoſp' Regis Angliæ Seneſchallo de latrocinio convictus per conſid' ejus Curiæ fuit (f) ſuſpenſus in patibulo S.Germani de pratis. Which proveth, that tho' the King be in a foreign Kingdom, yet he is judged in law a King there. The other part of the ſaid diverſity, is proved by the book caſe in 20(g)Ed.4.fo.6.a.b. where in a writ of Debt brought by Sir John Duglas Kt. againſt Eliz. Molford the Defendant demanded judgment of the Writ, for that, the

(d)Moor 803. 9 Co. 117.b. Apres 16.a.

(e)Moor 803.

(f)Moor 798,799.

(g)9 Co.117.b. Br Noſme de dignity 49.

the Plaintiff was an Earl of Scotland, but not of England, and that our Sovereign Lord the King had granted unto him ſafe conduct, not named by his name of Dignity, Judgment of the Writ, &c. And there Juſtice Littleton giveth the Rule: the Plaintiff (ſaith he) is an Earl in Scotland, but not in England; and if our Sovereign Lord the King grant to a Duke of France a ſafe conduct to Merchandiſe, and to enter into his Realm, if the Duke cometh and bringeth Merchandiſe into this Land, and is to ſue an Action here, he ought not to name himſelf Duke, for he is not a Duke in this Land, but only in France. And theſe be the very words of that Book caſe, out of which I collect three things. Firſt, That the Plaintiff was named by the name of a Knight, whereſoever he received that degree of dignity, Vide (a) 7 H. 6. 14 b. accord. 2. That an Earl of another Kingdom or Nation is no Earl (to be ſo named in legal proceedings) within this Realm: and herewith agreeth the Book of (b) 11 Ed. 3. the Earl of Richmonds Caſe before recited. 3. That albeit the King by his Letters Patents of ſafe conduct do name him Duke, yet that appellation maketh him no Duke, to ſue or be ſued by that name within England: So as the Law in theſe points (apparent in our Books) being obſerved, and rightly underſtood, it appeareth how cauſleſs their fear was, that the adjudging of the Plaintiff to be no Alien, ſhould make a confuſion of the nobilities of either Kingdom.

(a) Br. brief 159. Fitz. brief. 35.

(b) 11 E. 3. Fitz. brief 473. Devant 15. b. Moor 803. 9 Co. 117. b.

Now are we in order come to the fourth noun (which is the 4 general part) Alienigena; wherein 6 things did fall into conſideration. ¶ 1. Who was Alienigena, an Alien born by the Laws of England. ¶ 2. How many kind of Aliens born there were. ¶ 3. What incidents belonged to an Alien born. ¶ 4. The reaſon why an Alien is not capable of inheritance or freehold within England. ¶ 5. Examples, reſolutions and judgments, reported in our Books in all ſucceſſions of Ages, proving the Plaintiff to be no Alien. ¶ 6. Demonſtrative concluſions upon the premiſſes, approving the ſame.

The 4 general part *De Alienigena.*

1. An Alien is a Subject that is born out of the ligeance of the King, and under the ligeance of another, and can have no real or perſonal action for or concerning land; but in every ſuch action the Tenant or Def. may plead, that he was born in ſuch a Country, which is not within the ligeance of the King, and demand judgment if he ſhall be anſwered. And this is in effect the deſcription which Littleton himſelf maketh, lib. 2. c. 14. Villen' f. 43. Alienigena eſt alienæ gentis ſeu alienæ ligeantiæ, qui etiã dicitur

Who is an Alien.

Co. Lit. 128. b. 129. a. 4 Inſt. 152.

tur peregrinus,alienus,exotic⁹,extraneus,&c. Extraneus eſt ſubditus,qui extra terram, 1. poteſtatem regis natus eſt. And the uſual and right pleading of an Alien born, doth lively and truly deſcribe and expreſs what he is. And therein two things are to be obſerved: 1. That the moſt uſual and beſt pleading in this caſe is, both excluſive and incluſive, viz. extra ligeantian Dom' Regis &c. & infra ligeantiam alterius Regis, as it appeareth in (a) 9 Ed. 4.7.b. Book of Entries fol.244,&c. which cannot poſſibly be pleaded in this caſe, for two cauſes: Firſt, For that one King is Sovereign of both Kingdoms: 2. One ligeance is due by both to one Sovereign, and in caſe of an Alien, there muſt of neceſſity be ſeveral Kings, and ſeveral ligeances. Secondly, No pleading was ever extra regnum, or extra legem, which are circumſcribed to place, but extra ligeantiam, which (as it hath been ſaid) is not local or tied to any place.

(a) Devant 5. a.

(b) Sanf. Cor. 17.ſ. It appeareth by Bracton lib. 3. tract. 2. c. 15. fol. 134. that (b) Canutus the Daniſh King, having ſetled himſelf in this Kingdom in peace, kept notwithſtanding (for the better continuance thereof) great Armies within this Realm. The Peers and Nobles of England diſtaſting this government, by Arms and Armies (Odimus accipitrem quia ſemper vivit in Armis) wiſely and politickly perſuaded the King, that they would provid for the ſafety of him and his people, and yet his Armies carrying with them many inconveniences, ſhould be withdrawn: And therefore offered, that they would conſent to a Law, that whoſoever ſhould kill an Alien, and be apprehended, and could not acquit himſelf, he ſhould be ſubject to juſtice: But if the manſlayer fled, and could not be taken, then the Town where the man was ſlain ſhould forfeit 66 marks unto the King: And if the Town were not able to pay it, then the Hundred ſhould forfeit and pay the ſame unto the Kings treaſure: whereunto the King aſſented.

Full Ch. Hiſt. l. 1. 12. This law was penned: quicunq; occiderit Francigenam,&c. not excluding other Aliens, but putting Francigena a Frenchman for an Example, that others muſt be like unto him, in owing ſeveral ligeance to a ſeveral Sovereign, that is, to be extra ligeantiam Regis Angliæ, and infra ligeantiam alterius Regis. And it appeareth before out of Bracton and Fleta, that both of them uſe the ſame examples (in deſcribing of an Alien) ad fid' Regis Franciæ And it was holden, that except it could be proved, that the party ſlain was an Engliſhman, that he ſhould be taken for an Alien; and this was called Engleſhery, Engleſheria, That is, a proof that the party ſlain was an Engliſhman. (Hereupon Canutus

Canutus presently withdrew his Armies, and within a while after lost his Crown, and the same was restored to his right owner.) The said Law of Englescherie continued until 14 Ed. 3 c. 4. and then the same was by Act of Parliament ousted and abolished. So amongst the Laws of William the first, published by Master Lambert fol. 125. Omnis Francigena (there put for example, as before is said, to express what manner of person alienigena should be) qui tempore Edw. propinqui nostri fuit particeps legum & consuetudinum Anglorum (that is made denizen) quod dicunt ad scot & lot persoluat secundum legem Anglorum.

How many kind of Aliens there be.

Every man is either Alienigena, an Alien born, or subditus, a Subject born. Every Alien is either a friend that is in league, &c. or an Enemy that is in open War, &c. Every Alien Enemy is either pro tempore, temporary for a time, or perpetuus, perpetual, or specialiter permissus, permitted especially. Every Subject is either natus, born, or datus, given or made: And of these briefly in their order. An Alien friend, as at this time a German, a Frenchman, a Spaniard, &c. (all the Kings and Princes in Christendom being now in league with our Sovereign, but a Scot being a Subject cannot be said to be a friend, nor Scotland to be solum amici) may by the Common Law have, acquire, and get within this Realm, by gift, trade, or other lawful means, any treasure or (a) goods personal whatsoever, as well as any Englishman, and may maintain any (b) action for the same: But (c) Lands within this Realm, or Houses (but for their necessary Habitation only) Alien friends cannot acquire or get, nor maintain any action real or personal for any Land or House, unless the House be for their necessary Habitation. For if they should be disabled to acquire and maintain these things, it were in effect to deny unto them trade and traffick, which is the life of every Island. But if this Alien become an Enemy (as all Alien friends may) then is he utterly disabled to maintain any action, or get any thing within this Realm. And this is to be understood of a temporary Alien, that being an Enemy, may be a friend, or being a Friend may be an Enemy. But a perpetual Enemy (though there be no Wars by Fire and Sword between them) cannot maintain any Action, or get any thing within this Realm. All Infidels are in Law perpetui (d) inimici, perpetual Enemies for the Law presumes not that they will be converted, that being remota potentia, a remote possibility) for between them, as with the Divels, whose Subjects they be, and the Christian, there is perpetual Hosti-

(a) Co. Lit. 2. b.
(b) 1 Bulstr. 134. Yelv. 198. Owen 45.
(c) Co. Lit. 129. b. 1 Anders. 25. Moor 431. 1 Keb. 266. Cr. El. 142, 683. Cr. Car. 9. 4 Inst. 152. Dyer 2. pl. 8. O. Benl 10. Br. N. C. 375. Br. nonability 62. Poph. 36. Co. Lit. 2. b. Dyer 2. pl. 8.
(d) Wing. Max. 16

(a) 4 Inſt. 155.

Hoſtility, and can be no (a) Peace: For as the Apoſtle ſaith 2 Cor. 6. 15. quæ autem conventio Chriſti ad Belial, aut quæ pars fideli cum infideli? and the Law ſaith, Judæo Chriſtianum nullum ſerviat mancipium, nefas enim eſt quem Chriſtus redemit Blaſphemum Chriſti in ſervitutis vinculis detineri. Regiſter 282. Infideles ſunt Chriſti & Chriſtianorum inimici. And herewith agréeth the Book in 12 H. 8. fol. 4. where it is holden, that a Pagan cannot have or maintain any action at all.

By what Laws Kingdoms gotten by Conqueſt, &c. ſhall be governed. Dav. 30. b. 3 Keb. 402.

And upon this ground there is a diverſity betwéen a conqueſt of a Kingdom of a Chriſtian King, and the conqueſt of a Kingdom of an Infidel: For if a King come to a Chriſtian Kingdom by conqueſt, ſéeing that he hath vitæ & necis poteſtatẽ, he may at his pleaſure alter and change the Laws of that Kingdom; but until he doth make an alteration of thoſe Laws, the antient Laws of that Kingdom remain. But if a Chriſtian King ſhould conquer a Kingdom of an Infidel, and bring them under his ſubjection, there ipſo facto the Laws of the Infidel are abrogated; for that they be not only againſt Chriſtianity, but againſt the Law of God and of Nature, contained in the Decalogue. And in that caſe, until certain Laws be eſtabliſhed amongſt them, the King by himſelf and ſuch Judges as he ſhall appoint, ſhall judge them and their cauſes, according to natural equity, in ſuch ſort as Kings in antient time did within their Kingdoms, before any certain municipal Laws were given, as before hath béen ſaid. But if a King hath a Kingdom by title of diſcent, there ſéeing by the Laws of that Kingdom he doth inherit the Kingdom, he cannot change thoſe Laws of himſelf, without conſent of Parliament. Alſo, if a King hath a Chriſtian Kingdom by conqueſt, as King Henry the ſecond had Ireland, after King John had given unto them, being under his obedience and ſubjection, the Laws of England, for the Government of that Country, no ſucceéding King could alter the ſame without Parliament. And in that caſe whileſt the Realm of England, and that of Ireland, were governed by ſeveral Laws, any that was born in Ireland, was no Alien to the Realm of England. In which préſident of Ireland 3 things are to be obſerved: 1. That then there had béen two diſcents, one from H. the 2. to King Rich. the 1. and from Rich. to King John, before the alteration of the Laws: 2. That albeit Ireland was a diſtinct Dominion, yet the title thereof being by conqueſt, the ſame by judgment of Law might by expreſs words be bound by the Parliaments of England: 3. That albeit no reſer-

Ireland.

vation

vation were in Kings Johns Charter, yet by judgment of Law a Writ of Error did lye in the King Bench in England, of an Erroneous judgment in the Kings Bench of Ireland. Furthermore, in the case of the conquest of a Christian Kingdom, as well those that served in wars at the conquest, as those that remained at home for the safety and peace of their Country, and other the Kings Subjects, as well Antenati as Postnati are capable of Lands in the Kingdom or Country conquered, and may maintain any real action, and have the like privileges and benefits there, as they may have in England. Kelw. 202. pl. 19. 4 Inst. 71. F. N. B. 22. Vaugh. 290, 291.

The 3 kind of Enemy is, inimicus permissus, an Enemy that cometh into the Realm by the Kings safe conduct, of which you may read in the Regist. fo. 25. Book of Entries Ejectione firmæ 7. 32 H. 6. 23. b. &c. Now what a Subject born is, appeareth at large by that which hath been said de ligeantia; and so likewise de subdito dato of a donaison, for that is the right name, so called, because his legitimation is given unto him: for if you derive denizen from deins nee, one born within the obedience or ligeance of the King, then such a one should be all one with a natural born subject: and it appeareth before out of the Laws of K. W. 1. of what antiquity the making of denizens by the K. of England hath been. Co. Lit. 129. a.

3. There be regularly (unless it be in special cases) 3 incidents to a subject born: 1. That the parents be under the actual obedience of the King: 2. That the place of his birth be within the Kings Dominion: And 3. the time of his birth is chiefly to be considered; for he cannot be a subject born of one Kingdom, that was born under the ligeance of a King of another Kingdom, albeit afterwards one Kingdom discend to the King of the other. For the first, it is termed actual obedience, because tho' the K. of Eng. hath absolute right to other Kingdoms or Dominions as France, Aquitain, Normandy, &c. yet seeing the King is not in actual possession thereof, none born there since the Crown of Eng. was out of actual possession thereof, are subjects to the K. of England. 2. The place is observable, but so, as many times ligeance or obedience, without any place within the K. Dominions may make a subject born; but any place within the K. Dominions without obedience, can never produce a natural subject. And therefore, if any of the K. Embassadors in forein nations, have children there of their wives, being English women, by the common laws of England and they are natural born subjects, and yet they are born out of the K. Dominions. But if enemies should come in to any of the K. Dominions, and surprize any Castle or Fort, and possess Of the incidents to an Alien. Lit. Rep. 27. Cr. Car. 601, 602. March. 91. Jenk. Cent. 5.

poſſeſs the ſame by Hoſtility, and have iſſue there, that iſſue is no Subject to the King, though he be born within his Dominions, for that he was not born under the King's ligeance or obedience. But the time of his (a) birth is of the eſſence of a Subject born: for he cannot be a Subject to the King of England, unleſs at the time of his birth he was under the ligeance and obedience of the King. And that is the reaſon that Antenati in Scotland (for that at the time of their birth they were under the ligeance and obedience of another King) are Aliens born, in reſpect of the time of their birth.

(a) 2 Ventr. 6. Vaugh. 286.

Wherefore an Alien born is not capable of Lands.

4. It followeth next in courſe, to ſet down the reaſons, wherefore an Alien born is not capable of inheritance within England; and that he is not for three Reaſons: 1. The ſecrets of the Realm might thereby be diſcovered: 2. The revenues of the Realm (the ſinews of War, and ornament of Peace) ſhould be taken and enjoyed by Strangers born: 3. It ſhould tend to the deſtruction of the Realm. Which three Reaſons, do appear in the Statutes of 2 H. 5. cap. and 4 H. 5. cap. ultimo. But it may be demanded, Wherein doth that deſtruction conſiſt? Whereunto it is anſwered: Firſt, it tends to deſtruction tempore belli; for then Strangers might fortifie themſelves in the heart of the Realm, and be ready to ſet fire on the Commonwealth, as was excellently ſhadowed by the Trojan Horſe in Virgils 2 Book of the Eneads, where a very few men in the heart of the City, did more miſchief in few hours, than Ten thouſand men without the Walls in ten years: Secondly, tempore pacis for ſo might many Aliens born get a great part of the inheritance and freehold of the Realm, whereof there ſhould follow a failer of juſtice (the ſupporter of the Commonwealth) for that Aliens born cannot be returned of (b) Juries for the trial of iſſues between the King and the Subject, or between Subject and Subject. And for this purpoſe and many other, ſee a Charter (worthy of obſervation) of King E. 3. written to Pope Clement, Datum apud Weſt. 26 die Sept. anno regni noſtri Franciæ 4 regni vero Angliæ 17.

(b) 10 Co. 104 a. Co. Lit. 156. b. Poph. 36.

Examples and authorities in Law.

5. Now are we come to the examples, reſolutions and judgments, of former times: wherein two things are to be obſerved. Firſt, how many caſes in our Books do over-rule this caſe in queſtion (for ubi (b) eadē ratio ibi idem jus, & de ſimilibus idem eſt judicium:) 2. That for want of an expreſs text of law in terminis terminantib⁹, and of examples and preſidents in like caſes (as was objected by ſome) we are driven to determin the queſtion by

(c) Co. Lit. 10. a. 191. a. 232. a.

by natural reason: For it was said, Si cesset lex scripta id custodiri oportet quod moribus & consuetudine inductum est, & si qua in re hoc defecerit, recurren' est ad rationem. But that receiveth a threefold answer: First, That there is no such Rule in the Common or Civil Law; but the true Rule of the Civil Law is, Lex scripta si cesset, id custoditi oportet quod moribꝰ & consuetudine inductum est, & si qua in re hoc defecerit, tunc id quod proximum & consequens ei est, & si id non appareat, tunc jus quo urbs Roma utitur, servari oportet. Secondly, If the said imaginative Rule be rightly and legally understood, it may stand for truth: for if you intend ratio for the legal and profound reason such as by diligent study and long experience and observation are so learned in the Laws of this Realm, as out of the reason of the same they can rule the case in question, in that sense the said rule is true: But if it be intended of the reason of the wisest man that professeth not the Laws of England, then (I say) the Rule is absurd and dangerous: for (a) cuilibet in sua arte perito est credendum, & quod quisque (b) norit in hoc se exerceat. Et omnes prudentes illa admittere solent quæ probantur ijs qui in sua arte benè versati sunt. Arist. 1. Topicorum, cap. 6. Thirdly, There be multitudes of Examples, Presidents, Judgments and Resolutions in the Laws of England, the true and unstrained reason whereof doth decide this question; For Example: The Dukedom of Aquitain, whereof Gascoin was parcel, and the Earldom of Poytiers came to King Henry the second by the Marriage of Elianor Daughter and Heir of William Duke of Acquitain, and Earl of Poytiers, which discended to Rich. 1 H. 3. Ed. 1. E. 2. E. 3. &c. In 27. lib. (c) Ass. pl. 48. in one case there appear two judgments and one resolution to be given by the Judges of both Benches in this case following. The possessions of the Prior of Chelsey in time of War were seised into the Kings hands, for that the Prior was an Alien born: the Prior by petition of right sued to the K. and the effect of his petition was, That before he became Prior of Chelsey, he was Prior of Andover, and whilest he was Prior there, his possessions of that Priory were likewise seised for the same cause, supposing that he was an Alien born; whereupon he sued a former petition, and alleadged, that he was born in Gascoin within the ligeance of the King: which point being put in issue, and found by Jury to be true, it was adjudged, that he should have restitution of his possessions generally, without mentioning of advowsons. After which restitution, one of the said

(a) 4 Co. 29. a. 5 Co. 7. a. *Caudrie's* Case. Cawly 31.

(b) 11 Co. 10. b. 12 Co. 66. 13 Co. 12 Co. Lit. 125. a. 8 Co. 130. a.

Gascoin. Vasconia, Gasconia.

(c) Moor 796, 801 Apres 20. b.

ſaid advowſons became void, the Prior preſented, againſt whom the King brought a Qu' imp', wherein the King was barred, and all this was contained in the later petition. And the Book ſaith, That the Earl of Arundel and Sir G. of B. came into the Court of Common-pleas, and demanded the Opinion of the Judges of that Court concerning the ſaid caſe, who reſolved, that upon the matter aforeſaid the King had no right to ſeiſe. In which caſe, amongſt many notable points, this one appeareth to be adjudged and reſolved, that a man born in Gaſcoin under the K. ligeance, was no Alien born, as to Lands and Poſſeſſions within the Realm of England; and yet England and Gaſcoin were ſeveral and diſtinct Countries, 2 inherited by ſeveral and diſtinct titles, 3 governed by ſeveral and diſtinct municipal Laws, as it appeareth amongſt the Records in the Tower, Rott. vaſt. 10 E. 1. Num. 7. 4. out of the extent of the great Seal of England, and the juriſdiction of the Chancery of England; 5. the like objection might be made for default of trial, as hath been made againſt the Plaintiff. And where it was ſaid that Gaſcoin was no Kingdom, and therefore it was not to be matched to the caſe in hand, it was anſwered, that this difference was without a diverſity, as to the caſe in queſtion: For if the plea in the caſe at the bar be good, then without queſtion the Prior had been an Alien: For it might have been ſaid (as it is in the caſe at the bar) that he was born extra ligeantiã regis regni ſui Angl', & infra ligeantiã dñij ſui Vaſconiæ, and that they were ſeveral Dominions, and governed by ſeveral Laws: but then ſuch a conceit was not hatched, that a K. having ſeveral Dominions, ſhould have ſeveral ligeances of his ſubjects. 2ly, It was anſwered, that Gaſcoin was ſometime a Kingdom, as likewiſe Millain, Burgundy, Bavier, Britain, and others were, and now are become Dukedoms. Caſtile, Arragon, Portugal, Barcelona, &c. were ſometime Earldoms, afterwards Dukedoms, and now Kingdoms. Bohemia and Polonia were ſometime Dukedoms and now Kingdoms. and (omitting many other, and coming nearer home) Ireland was before 32 H. 8. a Lordſhip, and now is a Kingdom, and yet the K. of England was as abſolute a prince and ſovereign when he was Lord of Ireland, as now, when he is ſtiled K. of the ſame. 10 E. 3. 41. an exchange was made between an Engliſhman and a Gaſcoin, of Lands in England and in Gaſcoin; Ergo the Gaſcoin was no Alien, for then had he not been capable of Lands in England. 1 H. 4. 1. the King brought a Writ of Right of Ward againſt one Sybil, whoſe Husband was exiled into Gaſcoin;

Vaſconia appellata fuit tempore Caroli magni regnum de Vaſconia. Moor 800. Vaugh. 300.

Co. Lit. 7. b.

ergo

ergo Gaſcoin is no panel or member of England, for exilium eſt patriæ privatio, natalis ſoli mutatio, legum nativarum amiſſio. 4 E. 4. 10 b. the King directed his Writ out of the Chauncery under the great Seal of England, to the Mayor of (a) Burdeux (a City in Gaſcoin) then being under the Kings obedience, to certifie, whether one that was outlawed here in England, was at that time in the Kings ſervice under him in obſequio Regis: Whereby it appeareth, that the Kings Writ did run into Gaſcoin, for it is the trial that the Common Law hath appointed in that caſe. But as to other caſes it is to be underſtood, that there be two kind of Writs, viz. brevia mandatoria & remedalia, & brevia mandatoria & non remedialia: brevia mandatoria & remedialia, as Writs of Right, of Formedon, &c. of Debt, Treſpaſs, &c. and ſhortly, all Writs real and perſonal, whereby the party wronged is to recover ſomewhat, and to be remedied for that wrong that was offered unto him, are returnable or determinable in ſome Court of Juſtice within England, and to be ſerved and executed by the Sheriffs, or other Miniſters of Juſtice within England; and theſe cannot by any means extend into any other Kingdom, Country or Nation, though that it be under the Kings actual ligeance and obedience. But the other kind of Writs that are mandatory, and not remedial, are not tied to any place, but do follow ſubjection and ligeance in what Country or Nation ſoever the Subject is, as the Kings Writ to command any of his Subjects reſiding in any Foreign Country to return into any of the Kings own Dominions, Sub fide & ligeantia quibus nobis tenemini. And ſo are the aforeſaid mandatory Writs cited out of the Regiſter of Protection for ſafety of body and goods, and requiring, that if any injury be offered, that the ſame be redreſſed according to the Laws and Cuſtoms of that place. Vide le Regiſter, fol. 26. Stamford prærog. cap. 12. fol. 39. ſaith, That men born in Gaſcoin are inheritable to Lands in England. This doth alſo appear by divers Acts of Parliament: For by the whole Parliament, 39 E. 3. cap. 16. it is agréed, that the Gaſcoins are of the ligeance and ſubjection of the King. Vide 42 Ed. 3. cap. 2. & 28 H. 6. cap. 5. &c.

(a) Vaugh. 290. 9 Co. 31. b. 2 Rolls 583. Co Lit. 74. a. Br. trial. 126.

Vaugh. 401. 2 Inſt. 486. Moor 804.

3 Inſt. 179.

Ante fol. 8. b.

Guyen was another part of Aquitain, and came by the ſame title: and thoſe of Guyen were by Act of Parliament in 13 H. 4. not impleaded, ex Rot. Parliam. code anno, adjudged and declared to be no Aliens, but able to poſſeſs and purchaſe, &c. Lands within this Realm. And ſo doth Stamf. take the Law, prærog. c. 12. f. 39.

Guyen Guyenna. 13 H. 4. nu. 22. Cottons Abridgmt. 480.

And thus much of the Dukedom of Acquitain, which (together with the Earldom of Poytiers) came to King Henry the ſecond (as hath been ſaid) by Marriage, and continued in the actual poſſeſſion of the Kings of England by ten diſcents, viz. from the firſt year of King Henry the ſecond, unto the two and thirtieth year of King Henry the ſixth, which was upon the very point of three hundred years, within which Dutchy there were (as ſome write) 4 Archbiſh. 24 Biſhop. 15 Earldoms. 202 Baronies, and above a thouſand Captainſhips and Bailiwicks: and in all this long time, neither Book caſe nor Record can be found, wherein any plea was offered to diſable any of them that were born there, by foreign birth, but the contrary hereof directly appeareth by the ſaid Book caſe of (a) 27 lib. Aſſ. 48.

(a) Devant 19. 2. Moor 796, 801.

Normandy.
Normannia.
Normandia.

The Kings of England had ſometime Normandy under actual ligeance and obedience. The queſtion is then, whether men born in Normandy, after one King had them both, were inheritable to Lands in England; and it is evident by our Books that they were: for ſo it appeareth by the declaratory Act of 17 E. 2. de prærogativa regis c. 12. that they were inheritable to and capable of Lands in England: for the purview of that Statute is, Quod rex habebit eſcaetas de terris Normannor', &c. ergo Normans might have Lands in England: & hoc ſimiliter intelligend' eſt. ſi aliqua hæreditas diſcendat alicui nato in partibus tranſmarinis, &c. Whereby it appeareth, that they were capable of Lands within England by diſcent. And that this Act of 17 Ed. 2. was but a declaration of the Common Law, it appeareth both by Bracton who (as it hath been ſaid) wrote in the Reign of H. 3. lib. 3. tract. 2. c. 1. f. 116. and by Britton, who wrote in 5 E. 1. c. 18. that all ſuch Lands as any Norman had either by diſcent or purchaſe, eſcheated to the King for their Treaſon, in revolting from their natural liege Lord and Sovereign. And therefore Stamf. prærog. c. 12. f. 39. expounding the ſaid Stat. of 17 E. 2. c. 17. concludeth, that by that Chapter it ſhould appear (as if he had ſaid it is apparent without queſtion) that all men born in Normandy, Gaſcoin, Guyen, Anjou, and Brittain (whileſt they were under actual obedience) were inheritable within this Realm as well as Engliſhmen. And the reaſon thereof was, for that they were under one ligeance due to one Sovereign. And ſo much (omitting many other Authorities) for Normandy: ſaving I cannot let paſs the Iſles of Jerſey and Gerſey, parts and parcels of the Dukedom of Normandy, yet remaining under the actual ligeance and obedience of the King. I think no man will doubt, but thoſe that are born

Stamf. prærog. 38, 39, &c.

Kelw. 202. pl. 19. 4 Inſt. 286. 1 Co. Litt. 11. b. Seld. mare claus. lib. 2. cap. 19.

Jerſey and *Gerſey*

born in Jerſey and Gerſey (though thoſe Iſles are no parcel of the Realm of England, but ſeveral Dominions, enjoyed by ſeveral titles, governed by ſeveral Laws) are inheritable and capable of any Lands within the Realm of England. 1 E. 3. f. 7. Commiſſion to determin the title of Lands within the ſaid Iſles, according to the Laws of the Iſles: and Mich. 41 E. 3. in the Treaſury, Quia negotium præd' nec aliqua alia negotia de inſula præd' emergentia non debent terminari niſi ſecundum legem inſulæ præd' &c. And the Regiſter, fol. 22. Rex fidelib⁹ ſuis de Jerſey & Gerſey. King William the firſt brought this Dukedom of Normandy with him, which by five deſcents continued under the actual obedience of the Kings of England, and in or about the 6 year of King John, the Crown of England loſt the actual poſſeſſion thereof, until King Henry the fifth recovered it again, and left it to King Hen. 6. who loſt it in the 28 year of his Reign: wherein were (as ſome write) one Archbiſhoprick, and ſix Biſhopricks, and an hundred ſtrong Towns and Fortreſſes, beſides thoſe that were waſted in War. Maud the Empreſs, the only Daughter and Heir to Hen. the firſt, took to her ſecond Husband Jeffrey Plantagenet, Earl of Anjou, Tourain and Main, who had iſſue King H. 2. to whom the ſaid Earldom by juſt title deſcended, who, and the Kings that ſucceeded him, ſtiled themſelves by the name of Comes Andegaviæ, &c. until King Ed 3. became King of all France: and ſuch as were born within that Earldom, ſo long as it was under the actual obedience of the King of England, were no Aliens, but natural born ſubjects, and never any offer made that we can find to diſable them for Forein birth. But leave we Normandy and Anjou, and ſpeak we of the little, but yet antient and abſolute Kingdom of the Iſle of Mann, as it appeareth by divers antient and authentick records, as taking one for many. Arnold K. of Mann ſued to K. H. 3. to come into England to confer with him, and to perform certain things which were due to K. H. 3. thereupon K. H. 3. 28. Dec. ann. regni ſui 34. at Wincheſter by his Letters patents gave licence to Arnold K. of Man as followeth: Rex oīb⁹ ſalutē. Sciatis, q̄d licentiam dedim⁹, &c. Artaldo regi de Man veniendo ad nos in Angl' ad loquend' nobiſcū, & ad faciend' nobis q̄d facere debet; & ideo vobis mandam⁹ q̄d ei regi in veniendo ad nos in Angl', vel ibi morand', vel inde redeundo nul' p̄ faciatis aut fieri p̄mittat' damnū, injuriā, moleſtiā, aut gravam̄, vel etiā hominib⁹ ſuis quos ſec' ducet, & ſi aliquid eis forisfactū fuer it, id eis ſine dilatione faciat' em̄dari. In cujus, &c. duratur' uſq; ad feſtum ſancti Michaelis. Wherein two things are

Co. Lit. 11. b.

4 Inſt. 286.

Co. Lit. 7. a.

Man, Mannia. 4 Inſt. 283, 284. Co. Lit. 11. b. Kelw. 202. pl. 19. 2 And. 155, 116.

to be obſerved: 1. That ſeeing that Artold King of Mann ſued for a licenſe in this caſe to the King, it proveth him an abſolute King: for that a Monarch or an abſolute Prince cannot come into England without licenſe of the King, but any Subject being in league, may come into this Realm without licenſe. 2. That the King in his licenſe doth ſtile him by the name of a King. It was reſolved in 11 H 8. that where an office was found after the deceaſe of Thomas Earl of Darby, and that he died ſeiſed, &c. of the Iſle of Mann, that the ſaid office was utterly void, for that the Iſle of Mann, Normandy, Gaſcoin, &c. were out of the power of the Chancery, and governed by ſeveral Laws; and yet none will doubt, but thoſe that are born within that Iſle, are capable and inheritable of Lands within the Realm of England. Wales was ſometimes a Kingdom, as it appeareth by 19 H 6. fol. 6. and by the Act of Parliament of 2 H. 5. cap. 6. but whileſt it was a Kingdom, the ſame was holden, and within the fée of the King of England: And this appeareth by our Books, Fleta lib. 1. cap. 16. 1 E. 3. 14. 8 E. 3. 59. 13 E. 3. tit. Juriſdict. 10 H. 4. 6. Plow. Com. 368. And in this reſpect, in divers antient Charters, Kings of old time ſtiled themſelves in ſeveral manners, as King Edgar, Britanniæ Βασιλεὺς, Etheldredus, totius Albionis dei providenria Imperator, Edred⁹ magnæ Britanniæ Monarcha, which among many other of like nature I have ſeen. But by the Statute of 12 Ed. 1. Wales was united and incorporated into England, and made parcel of England in poſſeſſion, and therefore it is ruled in 7 H. 4. fol. 13. a. that no protection doth lye quia moratur in Wallia, becauſe Wales is within the Realm of England. And where it is recited in the Act of 27 Hen. 8. that Wales was ever parcel of the Realm of England, it is true in this ſenſe, viz. That before 12 Ed. 1: it was parcel in tenure, and ſince it is parcel of the Body of the Realm. And whoſoever is born within the Fée of the King of England, though it be in another Kingdom, is a natural born Subject, and capable and inheritable of Lands in England, as it appeareth in Plow. Com. 126. And therefore thoſe that were born in Wales before 12 Ed. 1. whileſt it was only holden of England, were capable and inheritable of Lands in England.

Walet, Cambria, Walkia.
3 Keb. 402.
4 Inſt. 239, 240, &c.
Plow. 126. b. 129. b.
Vaugh. 281.

Co. Lit. 130. b.
Fitz. protection 23
Br. protection 33.
3 Keb. 405.
Vaugh. 414.

France, Gallia, Francia.

Now come we to France and the members thereof, as Callice, Guynes, Tournay, &c. which diſcended to King Edward 3. as Son and Heir to Iſabel, Daughter and Heir to Philip le Beau, King of France. Certain it is, whileſt King

King Henry the ſixth had both England and the heart and greateſt part of France under his actual ligeance and obedience (for he was crowned King of France in Paris) that they that were then born in thoſe parts of France, that were under actual ligeance and obedience, were no aliens, but capable of, and inheritable to Lands in England. And that is proved by the Writs in the Regiſter, fo. 26. cited before. But the inrolment of Letters patents of denization in the Exchequer int' originalia, Anno 11 H. 6. with the Lord Treaſurers Remembrancer, was ſtrongly urged and objected: For (it was ſaid) thereby it appeareth, that King H. 6. in Anno 11 of his reign did make denizen one Reynel, born in France: Whereunto it was anſwered, That it is proved by the ſaid Letters patents, that he was born in France before King Henry the ſixth had the actual poſſeſſion of the Crown of France, ſo as he was Antenatus: And this appeareth by the ſaid Letters patents, whereby the King granteth, That Magiſter Johannes Reynel ſerviens noſter, &c. infra regnum noſtrum Franciæ oriundus, pro term' vitæ ſuæ ſit ligeus noſter & eodem modo teneatur ſicut verus & fidelis noſter infra regnum Angl' oriundus, ac quod ipſe terras infra regnum noſtrum Angliæ ſeu alia dominia noſtra perquirere poſſit & valeat. Now if that Reynel had been born ſince Henry the ſixth had the quiet poſſeſſion of France (the King being crowned King of France about one year before) of neceſſity he muſt be an Infant of very tender age, and then the King would never have called him his ſervant, nor made the Patent (as thereby may be collected) for his ſervice, nor called him by the name of Magiſter Johannes Reynel: But without queſtion he was Antenatus born, before the King had the actual and real poſſeſſion of that Crown.

Callice.
Calecia.
Caletum.
Kelw. 202. pl. 19.
2 And. 116.
Br. Trial 58, 133.
Br. Error 101.
Br. Cinq; Ports 10.
Vaugh. 401.
4 Inſt. 282.

Callice is a part of the Kingdom of France, and never was parcel of the Kingdom of England, and the Kings of England enjoyed Callice in and from the reign of King Edward the third, until the loſs thereof in Q. Marys time, by the ſame title that they had to France. And it is evident by our Books, that thoſe that were born in Callice, were capable and inheritable to lands in England, 42 E. 3. cap. 10. Vide 21 H 7. 33. b. 19 H. 6. 2 E. 4. 1. a. b. 39 H. 6. 39. a. 21 E. 4. 18. a. 28 H. 6. 3. b. By all which it is manifeſt, that Callice being parcel of France, was under the actual obedience and commandment of the King, and by conſequent thoſe that were born there, were natural born ſubjects, and no aliens. Callice, from the reign of K. E. 3. until the fifth year of Q. Mary, remained under the actual obedience of the King of England.

Guynes

Fitz.Protection 13. *Guynes.* Guynes alſo, another part of France, was under the like obedience to King Henry the ſixth, as it appeareth by 32 H.6. fo.4.a.

Tournay. Dyer 224. pl.29. Vaugh.282. And Tournay was under the obedience of Henry the eighth, as it appeareth by 5 Eliz.Dy.fo.224. for there it is reſolved, That a Baſtard born at Tournay, whilſt it was under the obedience of Henry the eighth, was a natural ſubject, as an iſſue born within this Realm by aliens. If then thoſe that were born at Tournay, Callice &c. whilſt they were under the obedience of the King, were natural ſubjects and no aliens, it followeth, That when the Kingdom of France (whereof thoſe were parcels) was under the Kings obedience, that thoſe that were then born there, were natural ſubjects and no aliens.

Ireland. Hibernia. 12 Co.108,109,&c. 4 Inſt.349,350,&c. Next followeth Ireland, which originally came to the Kings of England by conqueſt, but who was the firſt Conqueror thereof hath been a queſtion. I have ſeen a Charter made by King Edgar in theſe words: Ego Edgarus Anglorum Βασιλεὺς, omniumque inſularum oceani, quæ Britanniam circumjacent, Imperator & dom' gratias ago ipſi Deo omnipotenti Regi meo, qui meum imperium ſic ampliavit & exaltavit ſuper regnum patrum meorum, &c. mihi conceſſit propitia divinitas, cum Anglorum imperio omnia regna inſularum oceani, cum ſuis ferociſſimis Regibus uſq; Norvegiam, maximamq; partem Hiberniæ cum ſua nobiliſſima civitate de Dublina Anglorum regno ſubjugare, quapropter & ego Chriſti gloriã & laudem in regno meo exaltare, & ejus ſervitium amplificare devotus diſpoſui, &c. Dav.60. Præf.4 Rep.32,33. Yet for that it was wholly conquered in the reign of Henry the ſecond, the honour of the conqueſt of Ireland is attributed to him, and his ſtyle was, Rex Angliæ, dom' Hiberniæ, dux Normaniæ, dux Aquitaniæ, & comes Andegaviæ; King of England, lord of Ireland, duke of Normandy, duke of Aquitain and earl of Anjou. That Ireland is a Dominion ſeperate and divided from England, it is evident by our Books, 20 H.6.8. Sir J.Pilkington's Caſe, 32 H.6.25. 20 Eliz.Dyer 360. Plowd. Com. 360. And 2 R.3.12.a. Hibernia habet Parliament', & faciunt leges, & noſtra ſtatuta non ligant eos, quia non mittunt milites ad Parl' (which is to be underſtood, unleis they be eſpecially named), ſed perſonæ eorum ſunt ſubjecti Regis, ſicut inhab' in Caleſia Gaſconia & Guyan. Co.Lit.7.a. 12 Co.111. 4 Inſt.351. 1 And.263. 2 And.186. Dav.37.a. Jenk.Cent.164. Br. Parliament 98. Wherein it is to be obſerved, that the Iriſh man (as to his ſubjection) is compared to men born in Callais, Gaſcoign and Guyan. Concerning their Laws, Ex rotulis patentium de Anno 11 Regis H. 3. there is a Charter which that King made, beginning in theſe words: Rex, &c. Baronibus, Militibus, & omnibus libere tenentibus L. ſalutem, ſatis ut credimus veſtra audivit Co.Lit.141.a.b.

audivit diſcretio, quod quando bonæ memoriæ (a) Joh' quond' Rex Angliæ pater noſter venit in Hibern' ipſe duxit ſecum viros diſcr' & legis peritos, quorum com' conſilio & ad inſtantiam Hibernienſ. ſtatuit & præcepit leges Angl' in Hibernia, ita quod leges eaſdem in ſcripturas redactas reliquit ſub ſigillo ſuo ad ſcaccar' Dublin'. So as now the Laws of England became the proper Laws of Ireland: And therefore, and becauſe they have Parliaments holden there, whereat they have made divers particular Laws concerning that dominion, as it appeareth in 20 H. 6. 8. & 20 El. (b) Dy. 360. and for that they retain unto this day divers of their ancient cuſtoms, the Book in 20 H. 6. 8. holdeth, that Ireland is governed by laws and cuſtoms ſeparate and divers from the laws of England. A voyage Royal may be made into Ireland. Vide (c) 11 H. 4. 7. a. & 7 (d) E. 4. 27. a. which proveth it a diſtinct Dominion. And in anno 33 reg' El. it was reſolved by all the Judges of England, in the caſe of (e) Orurke an Iriſhman, who had committed high Treaſon in Ireland, that he by the ſtatute of 33 H. 8. cap 23. might be indicted, arraigned and tryed for the ſame in England, according to the purview of that ſtatute; the words of which ſtatute be, That all Treaſons, &c. committed by any perſon (f) out of the Realm of England, ſhall be from henceforth inquired of, &c. And they all reſolved (as afterward they did alſo in Sir J. Perrot's caſe) That Ireland was out of the Realm of England, and that Treaſons committed there, were to be tryed within England by that Statute. In the Statute of 4 H. 7. cap. 24. of (h) Fines, proviſion is made for them that be out of this land; and it is holden in Pl. Com. in Stowel's caſe 375. that he that is in Ireland is out of this land, and conſequently within that proviſo. Might not then the like plea be deviſed as well againſt any perſon born in Ireland, as (this is againſt Calvin that is a Poſtnati) in Scotland? For the Iriſhman is born extra ligeantiam Regis regni ſui Angliæ, &c. which be verba operativa in the plea: But all men know, that they are natural born Subjects, and capable of and inheritable to lands in England. Laſtly, To conclude this part with (i) Scotland it ſelf; in ancient time part of Scotland (beſides Berwick) was within the power and ligeance of the King of England, as appeareth by our books (i) 42 E. 3. 2. b. the L. Beaumonts Caſe, 11 E. 3. c. 2. &c. and by preſidents hereafter mentioned; and that part (though it were under the King of England's ligeance and obedience) yet was it governed by the laws of Scotland. Ex rot' Scotiæ, An' 11 E. 3. amongſt the Records in the Tower of London. Rex, &c. Conſtituimus Rich. Talebot Juſtic' noſtrum villæ Berwici

(a) Co. Lit. 141. b. 2 Vent. 4.

(b) 9 Co. 117. b. Cart. 186.

(c) Fitz. Protect. 24. Br. Protection 34.

(d) Fitz. Protect. 16. Bs. Protect. 72.

3 Inſt. 11, 18, 24. Co. Lit. 261. b. 1 And 262, 263. 2 Vent. 4. Cart. 190. Cawly 93.

(f) 35 H. 8. cap. 2.

(g) Cawly 93. Co Lit. 261. b. 3 Inſt. 11.

(h) 3 Inſt. 18. Plowd. 368. b.

Scotland.

Scotia.

(i) *Heylin's* Coſmog. lib. 1. p. 305, 306.

(k) Fitz Brief 551.

Berwici ſuper Twedam, ac omnium aliarum terrarum noſtrarum in partibus Scotiæ, ad faciend' omnia & ſingula quæ ad officium Juſticiarij pertinent ſecund' legem & conſuetud' regni Scotiæ. And after Anno 26 E. 3. ex eodem Rot. Rex Henrico de Percey & Ric' de Nevil, &c. volumus & vobis & alteri veſtrum tenore præſent' committimus & mandamus, q̃d homines noſtri de Scotia ad pacem & obedientiam noſtram exiſtentes, quod ipſi legibus, libertatibus, & liberis conſuetudinibus, quibus ipſi & anteceſſores ſui tempore celebris memoriæ Alexandri quondam Regis Scotiæ rationabiliter uſi fuerunt, uti & gaudere deberent, prout in quibuſdam Indent', &c. plenius dicit' contineri. And there is a Writ in the Regiſter 295. a Dedimus poteſtatem recipiendi ad fidem & pacem noſtram homines de Galloway. Now the caſe in (a) 42 Ed. 3. 2. b. (which was within ſixteen years of the ſaid Grannt; concerning the Laws in 26 E. 3.) ruleth it, That ſo many as were born in that part of Scotland, that was under the ligeance of the King, were no aliens, but inheritable to lands in England; yet was that part of Scotland in another Kingdom governed by ſeveral Laws, &c. And if they were natural Subjects in that caſe, when the King of England had but part of Scotland, what reaſon ſhould there be, why thoſe that are born there, when the King hath all Scotland, ſhould not be natural Subjects, and no aliens? So likewiſe (b) Berwick is no part of England, nor governed by the Laws of England; and yet they that have been born there, ſince they were under the obedience of one King, are natural born Subjects, and no aliens, as it appeareth in 15 R. 2. cap 7. &c. Vide (c) 19 H. 6. 35. b & 39 H. 6. 39. a. And yet in all theſe caſes and examples, if this new deviſed plea had been ſufficient, they ſhould have been all aliens againſt ſo many judgments, reſolutions, authorities and judicial Preſidents, in all ſucceſſions of Ages. There were ſometimes in England, whilſt the Heptarchy laſted, ſeven ſeveral crowned Kings of ſeven ſeveral and diſtinct Kingdoms, but in the end the Weſt Saxons got the Monarchy, and all the other Kings melted (as it were) their Crowns to make one imperial Diadem for the King of the Weſt Saxons over all. Now when the whole was under the actual and real ligeance and obedience of one King, were any that were born in any of thoſe ſeveral and diſtinct Kingdoms, aliens one to another? Certainly they being born under the obedience of one King and Sovereign, were all natural born Subjects, and capable of and inheritable unto any lands in any of the ſaid Kingdoms.

(a) Fitz. Brief 551. Devant 23. 2.

Berwick.

(b) 1 Sid. 381, 382.

(c) Fitz. Protect. 8. Br. Protect. 49.

In

In the holy History reported by S. Luke, Ex dictamine Spiritus sancti, cap. 21 & 22 Act. Apostolorum it is certain, that S. Paul was a Jew, born in Tarsus, a famous City of Cilicia: For it appeareth in the said 21 chapter 39 verse, by his own words: Ego homo sum quidem Judæus à Tarso Ciliciæ non ignotæ civitatis municeps. And in the 22 chapter, 3 verse, Ego sum vir Judæus natus Tarso Ciliciæ, &c. and then made that excellent Sermon there recorded, which when the Jews heard, the Text saith, Vl. 22. Levaverunt vocem suam dicentes tolle de terra hujusmodi, non enim fas est eum vivere: vociferantibus autem eis & projicientibus vestimenta sua, & pulverem jactantibus in aerem, Claudius Lysias the popular Tribune, to please this turbulent and prophane multitude (tho' it were utterly against justice and common reason) the Text saith, Jussit Tribunus induci eum in castra, 2 flagellis cædi, & 3 torqueri eum (quid ita?) ut sciret propter quam causam sic acclamarent; and when they had bound Paul with cords, ready to execute the Tribunes unjust commandment, the blessed Apostle (to avoid unlawful and sharp punishment) took hold of the law of a heathen Emperor, and said to the Centurion standing by him, Si hominem Romanum & indemnatum licet vobis flagellare? Which when the Centurion heard, he went to the Tribune and, Quid acturus es? Hic enim homo civis Romanus est. Then came the Tribune to Paul, and said unto him, Dic mihi si tu Romanus es? at ille dixit, etiam. And the Tribune answered, Ego multa summa civitatem hanc consequutus sum. But Paul not meaning to conceal the dignity of his birthright, said, Ego autem & natus sum: As if he should have said to the Tribune, You have your freedom by purchase of Money, and I (by a more noble mean) by birthright and inheritance. Protinus ergo (saith the Text) discesserunt ab illo qui illum torturi erant, Tribunus quoque timuit postquam rescivit, quia civis Romanus esset & quia alligasset eum. So as hereby it is manifest, that Paul was a Jew, born at Tarsus in Cilicia, in Asia Minor, and yet being born under the obedience of the Roman Emperor, he was by birth a Citizen of Rome in Italy in Europe, that is, capable of and inheritable to all privileges and immunities of that City. But such a plea as is now imagined against Calvin, might have made Saint Paul an Alien to Rome. For if the Emperor of Rome had several ligeances for every several Kingdom and Country under his obedience, then might it have been said against Saint Paul, that he was extra ligeantiam imperatoris regni sui Italiæ. & infra

ligeantiam

ligeantiam imperatoris regni sui Ciliciæ,&c. But as Saint Paul was Judæus patria & Romanus privilegio, Judæus natione & Romanus jure nationum. So may Calvin say, that he is Scotus patria & Anglus privilegio,Scotus Natione & Anglus jure Nationum.

Samaria in Syria was the chief City of the ten Tribes: but it being usurped by the King of Syria,and the Jews taken prisoners, and carried away in captivity, was after inhabited by the Paynims. Now albeit Samaria of right belongd to Jewry, yet because the people of Samaria were not under actual obedience, by the judgment of the Chief Justice of the whole world they were adjudged Alienigenæ,Aliens. For the Evangelist S.Luke cap.17. when Christ had cleansed the ten Lepers,Unus autem ex illis (saith the Text) ut vidit quia mundatus esset, regressus est,cum magna voce magnificans Deum & cecidit in faciem ante pedes ejus gratias agens, & hic erat Samaritanus. Et Jesus respondens dixit, nonne decem mundati sunt, & novem ubi sunt? Non est inventus qui rediret & daret gloriam Deo nisi hic alienigena. So as by his judgment this Samaritan was Aliegena. a stranger born, because he had the place,but wanted obedience. Et si desit obedienta non adjuvat locus. And this agreeth with the Divine,who saith,Si locus salvare potuisset,Satan de cœlo pro sua inobedientia non cecidisset, Adam in paradiso non cecidisset, Lot in monte non cecidisset, sed potius in Sodom.

6. Now resteth the sixth part of this division, that is to say, six demonstrative illations or conclusions, drawn plainly and expressly from the premisses.

1. Every one that is an alien by birth,may be ; might have been an enemy by accident; but Calvin could never at any time be an enemy by any accident,ergo,he cannot be an alien by birth. Vide 33 H.6.fo.1.a.b. the difference between an alien enemy and a subject traytor.Hostes sunt qui nobis, vel quibus nos bellum decernimus,cæteri proditores,prædones,&c.The major is apparent, and is proved by that which hath been said. Et vide Magna Charta cap.30. 19 E.4.6. 9 E.3.cap.1. 27 E.3.cap.2. 4 H.5.cap.7 14 E.3.stat.2.cap.2.&c.

2. Whosoever are born under one natural ligeance and obedience, due by the Law of Nature to one Sovereign, are natural born Subjects: But Calvin was born under one natural ligeance and obedience, due by the law of Nature to one Soverreign; ergo, he is a natural born Subject.

3. Who-

3. Whoſoever is born within the Kings power or protection, is no alien: But Calvin was born under the Kings power and protection; ergo he is no alien.

4. Every ſtranger born muſt at his birth be either amicus or inimicus: But Calvin at his birth could neither be amicus nor inimicus; ergo he is no ſtranger born. Inimicus he cannot be, becauſe he is ſubditus, and for that cauſe alſo he cannot be amicus; neither now can Scotia be ſaid to be ſolum amici, as hath been ſaid.

5. Whatſoever is due by the law or conſtitution of man, may be altered: But natural ligeance or obedience of the ſubject to the Sovereign cannot be altered; ergo natural ligeance or obedience to the Sovereign is not due by the law or conſtitution of man. Again, whatſoever is due by the law of Nature, cannot be altered: But ligeance and obedience of the ſubject to the Sovereign, is due by the law of Nature; ergo it cannot be altered. It hath been proved before, that ligeance or obedience of the inferior to the ſuperior, of the Subject to the Sovereign, was due by the law of Nature many thouſand years before any law of man was made: Which ligeance or obedience (being the only mark to diſtinguiſh a ſubject from an alien) could not be altered, therefore it remaineth ſtill due by the law of Nature. For Leges naturæ perfectiſſimæ ſunt & immutabiles, humani vero juris conditio ſemper in infinitum decurrit, & nihil eſt in eo q̃d perpetuo ſtare poſſit. Leges humanæ naſcuntur, vivunt & moriuntur.

Sawyer's Argument in Quo Warranto 25.

Devant 13. a.

Laſtly, Whoſoever at his birth cannot be an alien to the King of England, cannot be an alien to any of his ſubjects of England; But the Plaintiff at his birth could be no alien to the King of England; ergo the Plaintiff cannot be an alien to any of the ſubjects of England. The major and minor both be propoſitiones perſpicuè veræ. For as to the major it is to be obſerved, that whoſoever is an alien born, is ſo accounted in law in reſpect of the King: and that appeareth firſt by the pleading ſo often before remembred, that he muſt be extra ligeantiam Regis, without any mention making of the ſubject: 2. When an alien born purchaſeth any lands, the King only ſhall have them, though they be holden of a ſubject, in which caſe the ſubject loſeth his Seigniory. And as it is ſaid in our Books, an alien may purchaſe ad proficuum Regis; but the act of Law giveth the alien nothing: and therefore if a woman alien marrieth a ſubject, ſhe ſhall not be endowed, neither ſhall an alien be tenant by the courteſie. Vid. 3 H. 6. 55. a. 4 H. 3. 179. 3. The ſubject ſhall plead, that the Defendant is an

Co. Lit 2. b.

(a) Br. Denizen 1. Fitz Dower 179

alien born for the benefit of the King, that he upon office found may ſeize, and 2. that the tenant may yield to the King the land, and not to the alien, becauſe the King hath beſt right thereunto. 4. Leagues between our Sovereign and others are the only means to make aliens friends, & fœdera percutere, to make leagues, only and wholly pertain to the King. 5. Wars to make aliens enemies, and bellum indicere belongeth only and wholly to the King, and not to the Subject, as it appeareth in 19 E.4. fo 6. b. 6. The King only without the Subject may make not only Letters of Safe-conduct, but Letters patents of Denization, to whom and how many he will, and enable them at his pleaſure to ſue any of his ſubjects in any action whatſoever, real or perſonal, which the King could not do without the Subject, if the Subject had any intereſt given unto him by the Law in any thing concerning an alien born: May the Law is more preciſe herein, than in a number of other caſes of higher nature: for the King cannot grant to any other, to make of ſtrangers born, denizens, it is by the Law it ſelf ſo inſeperably and individually annexed to his Royal perſon (as the Book is in 10 H. 7. fol. 8. a) For the Law eſteemeth it a point of high Prerogative, jus Majeſtatis, & inter inſignia ſummæ poteſtatis, to make aliens born, ſubjects of the Realm, and capable of the lands and inheritances of England, in ſuch ſort as any natural born ſubject is. And therefore by the Statute of 27 H. 8. cap. 24. many of the moſt ancient prerogatives and royal flowers of the Crown, as authority to pardon Treaſon, Murder, Manſlaughter and Felony, power to make Juſtices in Eyre, Juſtices of Aſſiſe, Juſtices of Peace and Gaol Delivery, and ſuch like, having been ſevered and divided from the Crown, were again reunited to the ſame: but authority to make letters of Denization, was never mentioned therein to be reſumed, for that never any claimed the ſame by any pretext whatſoever, being a matter of ſo high a point of Prerogative. So as the pleading againſt an alien, the purchaſe by an alien, leagues and wars between aliens, denizations and ſafeconducts of aliens, have aſpect only and wholly unto the King. It followeth therefore, that no man can be alien to the ſubject that is not alien to the King. Non poteſt eſſe alienigena corpori, qui non eſt capiti, non gregi qui non eſt Regi.

Br. Patents 111.

The authorities of Law cited in this caſe for maintenance of the judgment, 4 H. 3. tit. Dower, Bracton lib 5. fo. 427. Fleta lib. 6. cap. 47. In temps E. 1. Hingham's Report, 17 Ed. 2. cap. 12. 11 Ed. 3. cap.

cap.2. 14 E.3.Stat' de Francia,42 E.3.fo. 2. 42 E.3.cap.10. 22 Lib. Aſſ.25. 13 R.2.cap.2. 15 R.2.cap.7. 11 H.4.fo.26. 14 H.4. fo.19. 13 H.4. Statut' de Guyan, 29 H.6.tit. Eſtoppel 48. 28 H.6.cap.5. 32 H.6.fo.23. 32 H.6.fo.26.Littl.temps E.4.lib.2.cap.Villenage, 15 E.4.fo.15. 19 E.4.6. 22 E.4.cap.8. 2 R.3.2 & 12. 6 H.8.fo. 2. Dyer, 14 H.8.cap.2.No manner of ſtranger born out of the Kings obeyſance, 22 H.8.cap.8. Every perſon born out of the Realm of England, out of the Kings obeyſance, 32 H.8. cap.16. 25 H.8. cap 15,&c. 4 Ed.6. Plow.Comment.fo.2.Fogaſſes Caſe, 2 & 3 Ph. & Ma. Dyer 145. Shirley's Caſe, 5 Eliz. Dyer 224.13 Eliz.cap.7. de Bankrupts:All Commiſſions ancient and late, for the finding of offices,to entitle the King to the lands of Aliens nee: Alſo all Letters Patents of Denization of ancient and later times, do prove, That he is no alien that is born under the Kings obedience.

The fifth General part, concerning Inconveniences.

Now are we come to conſider of legal inconveniences: And firſt of ſuch as have been objected againſt the Plaintiff, and ſecondly of ſuch as ſhould follow,if it had been adjudged againſt the Plaintiff.

Of ſuch inconveniences as were objected againſt the Plaintiff, there remain only four to be anſwered; for all the reſt are clearly and fully ſatisfied before. 1. That if Poſtnati ſhould be inheritable to our laws and inheritances, it were reaſon that they ſhould be bound by our Laws; but Poſtnati are not bound by our Statute or Common Laws: For they having(as it was objected) never ſo much freehold or inheritance, cannot be returned of Juries, nor ſubject to ſcot or lot, nor chargable to Subſidies or Quinzims, nor bound by any Act of Parliament made in England. 2. Whether one be born within the Kingdom of Scotland, or no, is not triable in England, for that it is a thing done out of this Realm, and no Jury can be returned for the tryal of any ſuch iſſue: And what inconvenience ſhould thereof follow, if ſuch Pleas that wanted trial ſhould be allowed (for then all Aliens might imagine the like plea) they that objected it, left it to the conſideration of others. 3. It was objected, That this innovation was ſo dangerous, that the certain event thereof no man could foreſee; and therefore ſome thought it fit, that things ſhould ſtand and continue as they had been in former time, for fear of the worſt. 4.If Poſtnati were by law legitimated in England, it was objected what inconvenience and confuſion ſhould follow,

if (for the puniſhment of us all) the Kings royal Iſſue ſhould fail, &c. whereby thoſe Kingdoms might again be divided. All the other Arguments and Objections that have been made have been all anſwered before, and need not to be repeated again.

1. To the firſt it was reſolved, That the cauſe of this doubt was the miſtaking of the Law: For if a Poſtnatus do purchaſe any lands in England, he ſhall be ſubject in reſpect thereof, not only to the laws of this Realm, but alſo to all ſervices and contributions, and to the payment of Subſidies, Tares and publick charges, as any denizen or Engliſhman ſhall be; nay, if he dwell in England, the King may command him by a Writ of Ne exeat Regnum, that he depart not out of England. But if a Poſtnatus dwell in Scotland, and have lands in England, he ſhall be chargable for the ſame to all intents and purpoſes, as if an Engliſhman were owner thereof, and dwelt in Scotland, Ireland, in the Iſles of Man, Jerſey or Gerſey, or elſewhere. The ſame Law is of an Iriſhman that dwells in Ireland, and hath land in England. But if Poſtnati, or Iriſhmen, men of the Iſles of Man, Jerſey, Gerſey, &c. have lands within England, and dwell here, they ſhall be ſubject to all ſervices and publick charges within this Realm, as any Engliſhman ſhall be. So as to ſervices and charges the Poſtnati and Engliſhmen born are all in one predicament.

2. Concerning the Trial, a threefold Anſwer was thereunto made and reſolved: 1. That the like objection might be made againſt Iriſhmen, Gaſcoins, Normans, men of the Iſles of Man, Jerſey and Gerſey, of Berwick, &c. all which appear by the Rule of our Books to be natural born ſubjects; and yet no Jury can come out of any of thoſe countries or places, for trial of their births there. 2. If the Demandant or Plaintiff, in any action concerning lands, be born in Ireland, Jerſey, Gerſey, &c. out of the Realm of England, if the Tenant or Defendant plead, that he was born out of the ligeance of the King, &c. the Demandant or Plaintiff may reply, that he was born under the ligeance of the King at ſuch a place within England; and upon the evidence the place ſhall not be material, but the only iſſue ſhall be, whether the Demandant or Plaintiff were born under the ligeance of the King in any of his kingdoms or dominions whatſoever: And in that caſe the Jury (if they will) may find the ſpecial matter, viz. the place where he was born, and leave it to the judgment of the Court; And that Jurors may take knowledge of things done

Co. Lit. 261. a. b. 6 Co. 47. a.

out

out of the Realm in this and like cases, Vide 7 H.7.8 b 20 Ed 3. Averrement 34. 5 R.2. tit. Trial 54. 15 E.4.15. 32 H.6.25. F.N.B. 196. Vide Dowdales Case in the sixth part of my Rep. fol.47. and there divers other judgments be vouched. 3. Brown in Anno 32 H.6. reporteth a judgment then lately given, that where the Defendant pleaded, that the Plaintiff was a Scot born, at S. Johns Town in Scotland, out of the ligeance of the King: whereupon they were at issue, and that issue was tried where the Writ was brought, and that appeareth also by 27 Ass. pl.24. that the Jury did find the Prior to be born in Gascoin: For so much is necessarily proved by the words (trove fuit.) And 20 E.3. tit. Averrement 34. in juris utrum, the death of one of the vouchées was alledged at such a Castle in Britain, and this was inquired of by the Jury: and it is holden in 5 R.2. tit. Trial. 54. That if a man be adhering to the Enemies of the K. in France, his Land is forfeitable, and his adherency shall be tried where the Land is, as oftentimes hath béen done, as there it is said by Belknap: And F.N.B. 196. in a Mordaunc', if the ancestor died in itinere peregrinationis suæ vers. terram sanctam, the Jury shall inquire of it. But in the case at the bar, séeing the Defendant hath pleaded the truth of the case, and the Plaintiff hath not denied it, but demurred upon the same, and thereby confessed all matters of fact, the Court now ought to judge upon the especial matter, even as if a Jury upon an issue joyned in England, as is aforesaid, had found the especial matter, and left it to the Court.

3. To the third it was answered and resolved, That this judgment was rather a renovation of the judgments and censures of the reverend Judges and Sages of the Law in so many Ages past, than any innovation, as it appeareth by the Books and Book cases before recited: Neither have Judges power to judge according to that which they think to be fit, but that which which out of the Laws they know to be right and consonant to Law. Judex bonus nihil ex arbitrio suo faciat, nec proposito domesticæ voluntatis, sed juxta leges & jura pronuntiet. And as for timores, fears grounded upon no just case, Qui non cadunt in constantem virum, vani timores æstimandi sunt.

4. And as to the fourth, it is less than a dream of a shadow, or a shadow of a dream: for as it hath béen often said, Natural legitimation respecteth actual obedience to the Sovereign at the time of the birth: For as the Antenati remain Aliens as to the Crown of England, because they were born when there were several Kings of the several Kingdoms, and the uniting 2 Ventris 6.

uniting of the Kingdoms by diſcent ſubſequent cannot make him a Subject to that Crown to which he was an Alien at the time of his birth. So albeit the Kingdoms, (which Almighty God of his infinite goodneſs and mercy divert) ſhould by diſcent be divided, and governed by ſeveral Kings; yet was it reſolved, That all thoſe that were born under one natural obedience, whileſt the Realms were united under one Sovereign, ſhould remain natural born Subjects, and no Aliens; for that naturalization due and veſted by birthright, cannot by any ſeparation of the Crowns afterward be taken away: nor he that was by judgment of Law a natural Subject at the time of his birth, become an Alien by ſuch a matter ex poſt facto. And in that caſe, upon ſuch an accident, our Poſtnatus may be ad fidem utriuſque Regis, as Bracton ſaith in the afore-remembred place, fol. 427. Sicut Anglicus non auditur in placitando aliquem de terris & Tenementis in Francia, ita nec debet Francigena & alienigena qui fuerit ad fidem Regis Franciæ audiri placitando in Anglia: Sed tamen ſunt aliqui Francigenæ in Francia, qui ſunt ad fidem utriuſque, & ſemper fuerunt ante Normanniam deperditam & poſt, & qui placitavit hic & ibi, ea ratione qua ſunt ad fidem utriuſque, ſicut fuit Willihelmus comes mareſchallus & manens in Anglia, & M. de Gynes manens in Francia, & alij plures. Concerning the reaſon drawn from the (a) Etymologies, it made againſt them, for that by their own derivation, alienæ gentis and alienæ ligeantiæ is all one: But Arguments drawn from Etymologies, are too weak and too light for Judges to build their Judgments upon: For Sæpenumero ubi proprietas (b) verborum attenditur, ſenſus veritatis amittitur: And yet when they agree with the Judgment of Law, Judges may uſe them for ornaments. But on the other ſide, ſome inconveniences ſhould follow, if the Plea againſt the Plaintiff ſhould be allowed: For firſt it maketh Ligeance local, videlicet, Ligeantia Regis Regni ſui Scotiæ, and Ligeantia Regis Regni ſui Angliæ: Whereupon ſhould follow. Firſt, That Faith or Ligeance, which is univerſal, ſhould be confined within local limits and Bounds. Secondly, That the Subject ſhould not be bound to ſerve the King in Peace or in War out of thoſe limits. Thirdly, it ſhould illegitimate many, and ſome of noble Blood, which were born in Gaſcoign, Guyan, Normandy, Callice, Tournay, France, and divers other of his Majeſties Dominions, whileſt the ſame were in actual obedi-

(a) Co. Lit. 8. b.

(b) Co. 11. b.

obedience, and in Berwick, Ireland, Jernsey, and Gersey, if this plea should have been admitted for good. And Thirdly, This strange and new devised plea inclineth too much to countenance that dangerous and desperate Error of the Spencers, touched before, to receive any allowance within Westminster Hall.

In the proceeding of this case, these things were observed, and so did the Chief Justice of the Common-pleas publickly deliver in the end of his Argument in the Exchequer Chamber. First, That no commandment or message by Word or Writing was sent or delivered from any whatsoever to any of the Judges, to cause them to incline to any opinion in this case: which I remember, for that it is honourable for the State, and consonant to the Laws and Statutes of this Realm. Secondly, There was observed, what a concurrence of Judgments, Resolutions, and Rules there be in our Books in all Ages concerning this case, as if they had been prepared for the deciding of the question of this point: And that (which never fell out in any doubtful case) no one opinion in all our Books is against this judgment. Thirdly, That the five Judges of the Kings Bench, who adjorned this case into the Exchequer-chamber, rather adjorned it for weight than for difficulty, for all they in their arguments una voce concurred with the judgment. Fourthly, That never any case was adjudged in the Exchequer chamber with greater concordance and less variety of opinions, the Lord Chancellor and twelve of the Judges concurring in one opinion. Fifthly, That there was not in any remembrance so honourable, great, and intelligent an auditory at the hearing of the Arguments of any Exchequer-chamber case, as was at this case now adjudged. Sixthly it appeareth, That Jurisprudentia legis communis Angliæ est scientia socialis & copiosa: Sociable, in that it agreeth with the principles and rules of other excellent Sciences, divine and human; copious, for that quamvis ad * ea quæ frequentius accidunt jura adaptantur: Yet in a case so rare and of such a quality, that loss is the assured end of the practise of it (for no Alien can purchase Lands, but he loseth them, and ipso facto the King is intituled thereunto, in respect whereof a man would think few men would attempt it) there should be such a multitude and Farrago of Authorities in all successions of Ages, in our Books and Book cases, for the deciding of a point of so rare an accident. Et sic determinata & terminata est ista quæstio.

* 5 Co. 127, b. Co. Lit. 218. a. 2 Inst. 137. Cart. 13.6 Co. 87 a

Super

Super quo viſis & per Cur' Dom' Regis hic plenius intellect' omnibus & ſingulis præmiſſis, diligenterque inſpect' & examinat, maturaque deliberatione inde habit', pro eo quod videtur Cur' Domini Regis nunc hic quod placitum præd' per præd' Richard' Smith & Nich. Smith ſuperius placit' minus ſufficiens in lege exiſt. ad præd' Robertum Calvin a reſpon. ad breve ſuum præd' habend' repellend'. Ideo conſiderat' eſt per cur' Domini Regis nunc hic, quod præd' Richardus Smith & Nicholaus Smith ad breve ipſius Roberti ulterius reſpond'.

Michaelis 26 & 27 ELIZABETHÆ.

Bulwer's Caſe.

BUlwer de Dalling in Norff. port action ſur ſon caſe enuers George Smith, & count com̃t un Henry Heydon Eſquire recover 20 l. &c. en le Comon Bank enuers le Pl', & puis judgm̃t, & devant execution, le dit Henry Heydon mozuſt; & puis le dit Def. ceo ſciant, al W. in le County de Norff. a utlager le Pl' ſur le dit judgment en le noſme de Henry Heydon malitioſè & deceptivè machinatus eſt; in perfozmance del quel le Def. Trin. 23 Eliz. al Weſt. in Midd' purchaſe un bꝛe de Capias ad ſatisfaciendum en le noſm̃ le dit Henry ſur le dit judgment, direct al vic̃ de Lond' queux p le ꝓcurem̃t le dit Def. retozn Non eſt inventus, ſur q̃ le Def. purchaſe un bꝛe de Exigent en le noſme le dit Henry, quel bꝛe les vits vic̃ p ꝓcurement le dit Def. retozn. que al ſeveral Huſtings le dit oze Pl' avoit eſte demaund, Et ad Huſtingum de coibus pꝛtis tent' in Guyldhalda Civitat' præd', die lunæ prox' poſt feſtum Apoſtol' Simonis & Judæ, ann' ſuprad, præd' le oze Pl' quint' exactus fuit, &c. & ideo ipſe le Pl' utlagatus fuit. Et puis S. Paſch. 24 Eliz. le Def. purchaſe hozs del dit Common Bank un bꝛe de Capias utlagatum, en le noſme le dit Henry, direct al Vicont de Norff. a p̃nder ſon cozps, &c. le q̃l bꝛe fiſt mention, q̃ le dit oze Pl' fuit utlage die lunæ prox' ante feſtũ Apoſtolor' Simonis & Judæ, &c. & le dit bꝛe le Def. al W. avantdit en le dit County de Norff. deliver al un Rob. Godfrey avonq̃s deputy del vicont de meſme le County, al entent, q̃ il executeſt le dit bꝛief, le q̃l Robert, per fozce del dit bꝛief pꝛiſt & arreſt le dit oze Pl', & lup impꝛiſon p le ſpace de 2 moys jeſque le oze Pl' purchaſe ſon charter de pardon, per reaſon de quel utlagary il fozfeit touts ſes biens & chateur. Et ſur ceſt count le Defendant demurre en ley: Et le pꝛincipal cauſe del demurrer fuit, pur ceo que ceſt action per le pꝛetente del Defendant

4 Leon. 52, 53. Noy 22.

Cr. Jac. 667. Cr. El. 629.

covient daver eſtre poyt in Midd' ou le toyt commence, car la (cõe fuit dit) le Def. purchaſe cibũ le Cap ad ſatisfac', come le Exigent & le Cap utlag. fuit. Et cõe q̃ le Cap utlag. fuit execute en Norff. ubi lact covient eſt poyt ou le toyt cõmẽce: cõe en le caſe de conſpirac' in 42 Ed. 3. 14. a. & dicts autres caſes fuer myſe. Auxi, q̃ le utlagat' q̃ fuit in Lond', touts ſes biens & chateux fuer forfeits, ou eſt pluis reaſõ a poyt lact q̃ en Norff. Mes fuit tr̃s & reſolve, q̃ (a) action fuit bien poyt in Norff. car eſt un maxim en ley, q̃d ibi ſem' debet fieri triatio, ubi jurat' melior' hab' poſſ notitiã, & en Norff. fuit le viſible toyt, car la le pl̃t fuit impriſon p le ſpace de 2 moys: & pur ceo ſtra graund reaſon q̃ le pl̃t poit aũ ſon act̃ la, & non cõſtat p le record q̃r biens ou chateux le pl̃t ad al tẽps del utlagat̃. mes pur aggravating des damages la pl̃t poit pone in evidence q̃r biens & chateux il ad forfeit p le utlagary. Et eſt action conſiſt ſur 2 principal parts, ſun, matter de record, & ſuter, matter en fait, & nul des matters del record mes eſt mixt ove matters en fait, & nul matter en fait, mes eſt mixt ove matters de record. Car les bꝛes & le utlagat̃ ſont matters de record, mes mixt ove matt̃s en fait. & le purchaſing & ꝓſecutiõ de eux p le Def. en voſme de Henry Heydon. q̃r ſont matters en fait: auxy lempriſonment eſt matter en fait, mes ceo eſt mixt ove le bꝛef de Capias utlagarum q̃ eſt de record. & ſi le pl̃t fuit arreſt p vertue de ceo: & matters en fait ſont ſolement triable p pays & nemy matters de record. Et quant ſun matter in ſun County eſt dependant ſur le matter in lauter County, la le pl̃t poit (b) eſſier in cel County il voile poyter ſon action (ſinon q̃ le Defendant ſur le general iſſue plead, ſerra prejudice de ſon trial, come il ne ſerra en ceſt caſe) Come ſi 2 (c) conſpire de enditer un en un County, & ils p lour malicious ꝓſecution font execution del conſpiracy en auter County. & ſi cauſe le party deſire indite, le Plaintiff poit aver ſon action de conſpiracy in cel County q̃ il voit, car ils mitront lour conſpiracy en ſun County, en execution en lauter County, & le matter de record del endictment eſt mixt ove matter in fait: Mes ſils conſpiront in un County, per force de cel conſpiracy ſans aſcun auter act p eux, il eſt indite en auk County, la le bꝛe covient eſtre poyt en le County ou le conſpiracy fuit, car les Def. ount fait riens en le County ou le endictment fuit, ne fuer parties ou privies al trover del endictment, forſq̃ ſolement p le conſpiracy en lauk County. Et ceo appiert en 14 E. 4. 3. b. & iſſint les liures in (d) 42 E. 3. 14. a (e) 20 H. 6. 10. a. b. F.N.B. (f) 116. & auks liures bien reconcile. Si (g) maſſe fait fait in Eſſex, p q̃ mes tenants receav en Londres, jeo p̃na mon action en Eſſex, & nemy en

(a) Cr. El. 574. 844. Dyer 38. pl. 51. Cr. Car. 20, 21 Dyer 40. pl. 66.

(b) 1 Sider. 218, 219, 401. Mod. Rep. 198, 199. Winch. 100. Latch. 262. 1 Brownl. 12. 69. Cr. Jac. 533. Noy 22. Hob. 196. 209. Dyer 38. pl. 54. Cr. El. 574. 844. Plow. 530.

(c) 4 Leon. 53. 2 Rolls Rep. 259. Stanf. Cor. 166. d.

(d) Fitz. conſpiracy 10 Br. conſpiracy 6.
(e) Br. Lieu 3.
(f) F.N.B. 116. m.
(g) Br. Lieu. 91. Br. Waſt. 9.

en Londres, car en tiel caſe jeo ay fait riens en Lond', 9 H.6.42.b En cours caſes quant laction eſt foundue ſur (a) choſes fait en ſeſſal Counties, & ambideux ſont materiall ou traverſable, & lun ſans iauſ ne maintain laction, ja le pl' poit eſſier a porter ſon act in ch des Counties il voit: Come eſt ſi ſervant ſoit (b) retain in un County & dept in auſ: & ove ceo accord 41 Ed. 3. f. 1. b. 34 H.6.18. a. 38 H.6.15.b. 14 E.4.6. 20 H.6.11. 29 H.8. Dyer 38. Vide 20 E. 3.25, &c. Iſſint ſi hõe ſoit arreſt in execution en un County & il (c) eſcape en auter County, le pl' poit eſſier a porr laction en ch des Counties il voit: & ove ceo accord 15 E.4.32.a.b. 30 H.6.6.a.b. 11 El. 278. Iſſint in hõe (d) Dannuity foundue ſur deſcription vers hom de religion, ou corps corporate, ou leſgliſe ou meaſon eſt en un County, & le ſeiſin eſt alledge en auſ County, le pl' poit eſſier en ch County il voit porr ſon action, 48 E.3.26.a.b. 4 H.4.1. 4 H.6.5.b. 10 H.6.19.a.b. 39 H.6.15.b. 2 E.4.28.b. 4 Ed.4.26.a, &c. F.N.B.152. E. Auterint, ſi annuity ſoit grant en un County, deſtr pay in auſ, action giſt ou le grant fuit: & ove ceo accord * 8 H.6.23.b. Iſſint ſi home cite un en un County, dappearer devãt (e) ladmiral en auter County, pur choſe fait en le corps del County, p force de ch le pty appiert, il poit adॅ ſon action en lun County ou lauter a ſon pleaſure, 5 Maſ Dyer 159.b. Vide 42 E.3.14.a. 44 E.3.31. b. 32. a. 46 E.3.8.b. 3 H.4.3.a. 38 H.6.14.b. 14 E.4.3.a. b. Meſm la ley de Court Eſpien. Iſſint ſi Def. fect preſcription in lun County, & remain in auſ County, il poit porr laction en ch des Counties il luy pleiſt: Vide 20 H.6.10.a.b. Iſſint ſi hõe ad ſeruit un en un County, (f) & il mozuſt in auſ Coũty, appeal de murd poet adॅ eſtre porr en lã County ou lauſ: & uncore le Def. fiſt riens in le County ou le pty mozuſt, mes le (g) mozt ch inſuiſt ſur le ſerue fait le felony, 18 Ed. 3 32. 9 H.6.63. 45 Aſſ. pl. 9. 43 Ed. 3 (h) 3 H.7.12.a. 4 H.7.18. 6 H.7.10. 11 H.4.93. Si hom comit (i) Robery en un County, & carry les biens en diſs Counties, le pty robbe poit adॅ appeal de felony in ch des Counties il voit, mes nemy (k) appeal de Robery mes ſoleint en le County ou le Robery fuit fait; car eſt felõy en touts les Counties ou les biens ſont empoꝛts (car felony ne deveſt ppty) mes neſt Robery (q̃ covient eſtre fait al pl̃ dun hõe) mes ſoleint en le County ou le Robery fuit fait. Vide 4 H 7.5.b. 29 H.8.39-40. Dyer 11. H.4.93. Vide 3 E 3 tit. Aſſ 446. In Det, ſi home count dun leaſe (l) pur ans en un County, de ẽre in auter Coũty, il covient porr ſon action ou le leaſe fuit fait, & nemy ou le ẽre giſt; car laction eſt foundue ſur le contract fait p le leaſe: 38 H.6.15 accord p Cur' 8 H.6.23. acc. Vid. 4 H 6.18. 14 Ed 4.3.29 H.8 40. Dyer. Et iſſint le ley bien explain in caſe in que ſont varieties

(a) Dyer 39. pl. 57. 1 Ventr. 364.

(b) Fitz. laborers 22. Statham laborers 5. Br. lieu 11. Dyer 38. pl. 53. 40. pl. 70. 4 Leon 51. 14 E. 4, 3. b. Br. lieu 72.

(c) 4 Leon 53. Cr. El. 271, 625. 2 Rolls 602 Dyer 278. pl. 5. 38. pl. 53. Br. lieu 33.43. 72, 82.

(d) Plow. 530. 12 E. 4. 3. a.

* Br. lieu 27.

(e) Hob. 196.

(f) Dyer 40. pl. 71.

(g) 4 Co. 42. b.

(h) Br. appeal. 83 Br. viſn 78.

(i) Dyer 39. pl. 56. 40. pl. 66. Kelw. 160. b.

(k) Dyer 39. pl. 56. Stanf. 63. g. Winch 69. Latch. 197. 271.

(l) Cr. Car. 184. Dyer 40. pl. 70. Cr. Jac. 142. Cr. El. 116. 259. 565. 12 E. 4, 3. a. Br. lieu 43.

cieties des opinions in nostr̃ liures. Mes si lease soit fait in un
(a) Dyer 40. pl. 70 County, & le terre gist en auter, laction de (a) tiels serra port
ou le terr̃ gist, & nemy ou le lease fuit fait, coñt q̃ le term soit
passe, car le fre & damages, ou damages solement pur le wast, q̃
(b) Dyer 38. pl. 53, 54. est touch, serra recover, 14 E. 4. 3 a. accord'. Si home assum̃a (b)
curer un fs un County, & misfait in auter County, le Pl' ad
election a porter son action in q̃l des Counties il voit: Et ove ceo
accord 11 R. 2. tit. Action sur le case 37. Si home ne repair wall in
Essex, q̃ il doit repair, p̃ce mon terre in Midd' est surround, jeo
poy porter mon action in Essex, car la est le default del Def. com̃
est adjudge in 7 H. 4. 8. ou jeo poy aver ceo in Midd', car la jeo
ave le damage, come est plee 11 R. 2. tit. Action sur le case 36.
(c) Dyer 38. pl. 54. 39. pl. 57. Issint si un forge un (c) Chr̃e in un County, & plaint ceo in auter,
le Pl' pait eslier in q̃l County il voit porter son action, 29 H. 8. 38
Vide 22 H. 6. 5. a. b. Mes quãt le Defend. fait son plee de rien
culpabl' serra p̃judice in son trial, la le Pl' aura election a por-
(d) Dyer 38. pl. 54. 39. pl. 57. ter son br̃e in quel County q̃ il voit. Vide (d) 29 H. 8. Dyer fol.
38. ou Gawyn sua appeal de Robery in le County de Wiltes. on
le Robery fuit fait, et p̃ds Husley & Gibs come accessories, & count
q̃ les principals, nosmes in le br̃e, & q̃ fuer attaint, sont le Ro-
bery in Com̃ Wiltes. & q̃ le Def. felonious̃t al Londres, devãt
le Robery fait, adbetr̃ eux a fair ceo: & fuit adjudge, q̃ coñt q̃
(e) 4 Co. 47. b. Jenk. Cent. 29. le Pl' ne pout ad̃ forisr (e) un appeal p̃s le principal & accessories,
& vers le principal, ceo de necessity covient estre port in Com̃ Wilt.
autr̃f, pur ceo q̃ ceux de Com̃ Wilt̃ sur rien cul̃ plead, & Lond'
ne poyent jayer, & ceux de Wilt̃ ne potent inqre de chose in Lond'
coñt q̃ fuit chose transit̃ oyr (car in case de felony, q̃ cõcern le vie
de l'or̃, chescũ act p̃a try in le pr̃ County ou le act fuit fait in
fact) tappeal p̃s les fits accessories abette: vide 43 E. 3. 17, 18, 19
Et est dett̃ obṽe, q̃ in touts actions reals, si aliun fuit turb̃ sur
(f) Dyer 38. pl. 52. Hob. 37. Winch 69. Latch 197. Cr. Car. 143, 184. le terr̃, ou in aliun action, in q̃ possession del terr̃, ou chose (f) la-
tat, ou q̃ fuit turb̃ sur le terr̃ p̃ reason de ceo, est dr̃e recover, touts
ceux serr̃ port in le County ou le terr̃ gist: Come en br̃e de Droit
de gard de' terr̃, ou br̃e de Intrusiõ de gard, ceux serr̃ port in le
County ou le terr̃ gist, coñt q̃ le refusel fuit, ou le Seignior
soit in auter County, 29 E. 3. 3. 38 H. 6. 14. b. & 22 R. 2. tit. Br̃e 937.
accord'. Issint in br̃e de Dr̃t de gard pur le corps tãtum, ceo serra
port in le County ou le terr̃ est, car ceo est in le droit, & savoir del
terr̃, 21 E. 3. 42. & 30 E. 3. 25. 9 E. 3. 12, 13. 10 E. 3. 7. accord. & le
reason de 40 E. 3. 6. accord' ove ceo, coñt q̃ le Judgm̃t est m̃tion
la dessre done al cont̃. Mes br̃e de Ravishm̃t de gard ſra port ou
le ravishm̃t fuit, & nemy ou le fre est, ou lou le corps est carry; car

ceo

ceo eſt foundue ſur le cavilliment, 38 H.6.14.b. 22 R.2.tit.Brief 937 & 12 El. 289. Dyer. Et briefe de forfer̃ de mariage ſer̃ port ou le terre eſt; car le briefe ſuppoſe un intruſion in la terre: & ove ceo accord le dit liure in 22 R.2. & 38 H.6.15.a. Et briefe de valore (a) maritagij ſer̃ port ou la terre eſt, car le ſeignior ne beſoign de fair aſcun (b) ten̄; mes ſil fait ten̄ & lauter refuſe, & il ceo al- iedge in le County, donques briefe de valore maritagij giſt in le County ou le refuſel fuit, 22 R. 2. tit. Brief 937. 38 H. 6. 15. a Briefe de Quare impedit & Quare incumbravit (c) ſer̃ touts foits ports ou leſgliſe eſt: car p̄ un le Pl̄ recov̄ ſon preſentm̄t, & p̄ lauter le clark leveſq; ſer̃ remove & le clark le Pl̄ admit, 38 H.6.14 & 15. accord: vide 4 E.3.9. auterm̄t eſt in le caſe del Roy. Mes Quare (d) non admiſit ſer̃ port in le Coũty ou le refuſe fuit, & nēp in le Coũty ou le eſgliſe fuit; car damages ſolem̄t ſ̄t deſtre recover, & le refuſel eſt le comencem̄t del tort & le ground del action: & iſſint eſt le liure adjudge in 38 H.6.14 & 15. F.N. B.47.f. Et Quare imped' dũ p̄bẽd ſer̃ port in le County ou le Cathedral Eſgliſe eſt, & nemp in le Coũty ou le corps de p̄bẽd eſt; car le clark de Pl̄ eſt deſtre induct & inſtal in le Cathedral Eſgliſe: & ove ceo accord 21 E.3.5. & Dyer 2 El. 194. (e) mes 43 E. 3.24. & 15 E 3. Bre 325. ſemble al cõ t: vide 24 E.3.37. Et iſſint le ley bi̇ explain, in un caſe in q̄ fuit diſ̄ſity des opiniõs in nē liures. Et ſi hom̄ al comũ ley ad rẽt iſſuer̃ hors de deux Counties, il ne poit aũ ewe (f) Aſſiſe in un Coũty, pur ceo q̄ chefcũ part d̄i fre in les deux Counties eſt charge ove le rẽt, & tout ſer̃ miſe in vieu, come eſt agr̃ee 18 Ed. 2. tit. Aſſiſe 380. 18 E.3.32. 10 E.3.21. 10 Aſſiſe pl̄ 4 & 18 Aſſiſe pl. 1. mes ſi home fait leaſe pur auter vie del ter̃ in deux Counties, ren̄ rent, & le rẽt eſt arere, & ceſtuy q̄ vie devy, le leſſor aũr a act̄ de det in q̄l des Coũties il voet; car ore ceo eſt change in det: & in ceſt caſe nul ter̃ ſer̃ miſe in vieu, mes le pl̄ del dettor ſer̃ ſolem̄t charge p̄ le comũn ley. Iſſint ſi rẽt ſoit iſſuãt hors del ter̃ de B. in deux Coũties, & le rẽt eſt arere, & ceſtuy q̄ ad le rent mort, ſes executors poient aũ act̄ de det vs B. in q̄l des Counties ils voilont, ſur leſtat de 32 H.8.c.37. car com̄t q̄ il covient porter lactiõ in lun des coũties, uncore al comũn ley le p̄ſon le Def. eſt charge in laction de det; & nemp le terre. Et devant le ſtatute de 6 R.2. cap.2. briefe de det & accoũt vs receivor, & autiels actions, poient eſtre port in tiel County ou le party poit eſtre mieulx ameſne eins a reſponder, & le plaint̄ poet aver count dun contract ou reſceit, &c. in aſcũ auk̄ County, quia debitum & contractus, &c. ſunt (h) nulli⁹ loci: vide pur ceo 2 Ed. 3. 44. 6 Ed. 3. 266. & 275. 8 Ed. 3. 380.

(a) Br. lieu 43.

(b) 5 Co. 127.a.b.

(c) F.N.B. 48 c.

(d) F.N.B. 47. f. Dyer 40. pl. 69.

(e) Dyer 194 pl. 33

(f) Co. Lit. 147.a Poſt. 3.b. 24.a. b.

(g) 2 Inſt. 231.

(h) 2 Inſt. 231.

10 E.3.7.19 E.3.Juriſ.29. 29 E.3.26. 33 E.3.tit. Juriſ.57. 40 E.3.7. 3 H.6.30. 15 E.4.19. 21 E.4.88. Come in 22 H.6.9.b. & 10.a b. ou le Roy grant office de ſurveyor del packing de touts manner de Draps deins Lond' & les liberties de ceo, q̄ ſont in 2 Counties, & laſſ. fuit port in Midd': & la Newton & Paſton diſoient, q̄ eſt grand diverſity ſenter aſſiſe de rent & ceſt aſſiſe; car ou rẽt charge eſt iſſuant hors de t̄res in divers Counties, cheſcun parcel eſt charge ove tout, & covient q̄ touts les teñ del terre ſont noſm̄, mes icy le p̄ſon eſt charge & nemy le terre, uncore loffice pur q̄ laſſiſe fuit port extend in deux Counties. Et ſi fine ou feoffm̄t ſoit fait de t̄res in deux Counties ove garr̄, le Warrañ Chartæ poet eſtre port in aſcũ des Counties, 29 E.3.3.a.b. Eſt purvieu p leſtatute de 7 R.2.c.10. que Aſſiſe de novel diſſeiſin ſerr̄ deſormes grant & fait de rent arere, due des teneñts in pluſors Counties, deſtre ten⁹ in les cõfines des Counties, & ſur ceo laſſiſe ſerra p̄iſe & try p gents de meſm̄ les Counties, in meſm̄ le manner & form come eſt fait dun coñon de paſture in un County, append̄ aux teñts in auk̄ County: car, al coñon ley, ſi home ad ewe cõmõ in terre in un County, appendañt ou apptañt al t̄re in auter County, il aūa deux ſeveral briefs al vic̄ des ſeūal Counties: ou ſi t̄re a q̄, &c. giſt in un County, & les t̄res in q̄, &c. giſont in ſeūal Counties, la il aūa un brief de Aſſiſe al vic̄ del County ou le t̄re a q̄, &c. giſt, & ſeūal briefs al vic̄ des Counties ou les t̄res in q̄, &c. giſont: & tout ceo appiert in le Reg. & F. N. B. 180. a. Et meſm̄ la ley eſt, quant nuſance eſt fait in un County, & le terre a q̄, &c. eſt in auter County, come appiert auri in le Reg. & F.N.B. 183.k. Iſſint q̄ ſi home ad rent in 3 ou 4 Counties, ſemble q̄ ceſtuy q̄ eſt diſſeiſie poet aūer ſeūal Aſſiſes deſtre p̄iſe in confinio comitatuum: car le letter del ſtatute de 7 R. 2. eſt general, de rent due des teneñts in pluſors Counties: & coñ q̄ ceo ad un reference al caſe de coñon de paſture, &c. uncore, intāt q̄ in caſe de coñon de paſture ſi le t̄re in q̄, &c. giſt in diūs Counties, & la t̄re a q̄, &c. giſt in auter County, la ſerr̄ tants des briefs coñ sōt ſeūal Counties; de ceo inſuiſt q̄ tiel remedy aūa ceſtuy q̄ ad rent iſſuāt des t̄res in pluſors Counties. Auri le caſe del coñon eſt miſe exempli gratia & ſimilitudinariè, & nullum ſimile quatuor pedibus currit: & neſt neceſſary, q̄ un ſimile accord in touts points. Et leſtatute de 7 R. 2. fuit fait pur ſatisfier un doubt q̄ fuit conceive devant; car p ceo eſt purvieu, q̄ briefs in tiel caſe ſerr̄ faits in le Chauncery, ſans aſcũ manner de contradiction, cibiens des diſſeiſins devant faits, come in apres deſtre fait: & le doubt fuit ſur leſtatute de Magna Charta cap. 12. Recognitiones de nova diſſeiſina, & de

Fitz. Aſſiſe 10. Br. Aſſiſe 76.

Co. Lit. 154.a. 4 Co. 4 b.

Co Lit. 154.a.

& de morte anteceſſor' non capiant' niſi in ſuis comitatibus: Et aſtuns teigne, q̃ ceo ne fuit obſerve q̃n les Juſtices de Aſſ. ſcõt in confinio comitat', & noſmem̃t q̃n ſont 20 counties meſne int̃ les 2 counties come en liure eſt in 5 E.4.fo.2.b. Mes ceſt doubt poit eſt̃ aury conceive ſur le dit Aſſ. de novel diſſ. de common, q̃n la t̃re in q̃, &c. eſt en un County, & la t̃re a q̃, &c. in auter county (q̃l caſe ſans queſtion neſt pas reſtrain p̃ le dit Stat̃: Car Aſſiſe de no. diſſ. giſt de cõmon de paſture al cõmon ley, cõe p̃ Leſtat̃ de W.2.c.29. appiert) Vide 10 E.3.21. & 10 Aſſ. p.4. Et ſi beſoigne fuit, Leſtature de W.2.c.28. extend al dit caſe del Rent, p̃ q̃ eſt purvieu, Quod quotieſcunq; de cætero evenerit in Cancellar', q̃d in uno caſu reperit' br̃e, & in conſimili caſu, cadente ſub eod' jure, & ſimili indigente remedio, non reperit', concordent clerici in Cancell' in brevi faciendo, &c. vel ad proximum Parl' de conſenſu Juriſperitor' fiat br̃e: Et Leſtat̃ conclude ove l'effect d̃un maxim del Cõmon ley, Quod Curia dom' Regis non debet deficere conquerentibus in juſtitia perquirenda. Vide 38 E.3.13.a. ou le caſe fuit, q̃ le Roy poit br̃e de Droit de la quart p̃t des diſmes & offerings d̃Eſgl' de S. Dunſtan in le Weſt, in Fleetſtreet, in le Suburbs de Londres, en̈s le Pr̃or de S. Johns de Jeruſalem in Engl': la Candiſh p̃iſt exception al br̃e, pur c̃ q̃ cont̃ q̃ ceſt br̃e f̃ done p̃ Leſtat̃ de W.2.c 5. ver. finem, & Artic. Cleri c.2. q̃r Stat̃ done, que ſi a̋ br̃e Ad petendum advocationem decimarum petitar', &c. & ceſt br̃e eſt conceive de la quart p̃t des diſmes & offerings, le q̃l n̄e my garr̃ p̃ Leſtatutes, judgm̃t de br̃e intant q̃ Leſtatutes ne done br̃e de la quart p̃t des diſmes? Thorpe le chief Juſtice, q̃ d̃ne le rule, dit, cont̃ q̃ Leſtat̃ ne limit p̃ exp̃ſſe pols, forſq; des diſmes, uncore ceux in le Chancery potent fair br̃e In conſimili caſu, & le br̃e eſt aſſets bon, p̃ q̃ r̃nd̃es. Et in 18 E.2. tit. 827. br̃e d̃Entr̃ fuit port in le County de Suſſ. le ten̄t plead releaſe del an̄ le Pl' ove garr̃, q̃ fuit dedit, & trove pur le Pl' in Lond' p̃ Jury de Friday-ſtreet, &c. p̃ q̃ le d̃t recov̋, & le ten̄t port attaint, & la exception fuit p̃iſe, pur c̃ q̃ in le br̃e neſt compriſe d̃attacher le pty, judgm̃t, &c. & pur le Pl' fuit dit, q̃ br̃e fuit grant al Viſ̄ de Lond' de ſommoner les 24 & d̃attacher les 12, & auk̃ br̃e al Viſ̄ de Suſſ. d̃attacher le pty ou le t̃re fuit, & l'un br̃e & l'auk̃ fuer̃ lies in Court: A q̃ fuit dit, q̃ fuit nul ley ſpecial, q̃ mainteinera ceſt br̃e q̃ eſt hors de common courſe. Beresford le chief Juſtice del Bãk, q̃ d̃ne le rule dit, In novel caſe novel remedy, &c. p̃ q̃ r̃nd̃es. Et pur ceo ſi ſoit Sr̃ & ten̄t, & le tenancy extend in 2 Counties, in ceſt caſe ſi les rents & ſervices ſont arere, le Sr̃ poit a̋ ſeũal br̃es des cuſtoms & ſervices, pur chesc' County un br̃e, & aver̄ eur

Co. Lit. 154.a. Fitz. Aſſize 26.

9 Co. 88.b. Apres 4.b.

F N.B. 30.c.

F.N.B. 107.p.

eur returnable a un jour in le Cõmon Bank, & donq̃s de counſ ſur eur come ſon caſe eſt, quia alitèr curia(a)Regis deficeret conquerentibus in juſtitia perquirenda: & ove ceo accordõ F.N.B.151.b. & 30 E. 1.tit.Droit pl. ultimo. Et ceo eſt bon example pro quolibet conſimili caſu, &c. ſimili indigente remedio. Vide 12 E.1.tit.Attaint 71.fort bon caſe: Et le reaſon & rule del liure in 21 E.3.fo.18. eſt deſtre obſerve, ou le caſe fuit, que fine fuit levy dun Manor in un County, & le tenancy giſt in auter County; ore ou le per q̃ ſervitia, ſerra port fuit le queſtion; & fuit adjudge q̃ c o fuit dñ port in le Counſ ou le Manor fuit: Car la Stone pronounce le rule del Court in ceur parols, il ne poit nul auſ bꝛe aver, car il covient, q̃ ſon bꝛe ſoit accordant a le fine, & port in le County ou le note eſt levy. Vide 11 R.2. tit. Action ſur le Caſe 36.7 H.48. Vide 26 H.6. tit.Covenant 9.41 Aſſ. pl.12. 9 H.5.6. 22 H.6.5. Et in le principal caſe, ou fuit object q̃ le dit Cap' Utlagat' fuit erronious, car ceo fuit proxim' ante feſtum, &c. ou ſerſ poſt feſtum, &c. le Court ne priſt aſcun regard a ceo, car le error in le bꝛe que le Def. meſme ad tortiouſment purſue ne donef (b) advantage a luy meſme: Mes intant q̃ il fuit impriſon & moleſt per ceo, ceo done cauſe daction al Pl'. Aury le Court ne reſpect le clauſe que le Def. al W. in Com Norff. &c. malitiosè & deceptivè machinatus fuit, &c. Car ceo eſt cy ſecret & cy incertain q̃ ceo ne poit eſtre try.

(a) 9 Co.88.b. Devant 4.a.

4 Leon.54. 5 Co.39.a. b. 8 Co.59.a. F.N.B.21.f. Palm.39,40. 2 Sand.46. 1 Roll.757, 759, 760. Fitz.Error 92.

Hillarij,

Hillarij 27 ELIZABETHÆ Reginæ,

In Scaccario.

Sir *Miles Corbet's* Caſe.

INter Sir Ed. Clere & Miles Corbet advocats armig' oꝛ chival fuit reſolve in un caſe concernant le Patronage de Marham in le County de Norff. q̄ ou in le pais de Norff. la eſt un ſpecial manner de common appel Shack, q̄ eſt deſte p̄ſe in tre arable, oꝑs harveſt jeſus le tre ſoit ſeme arere, &c. & ceo commence in auncient temps in ceſt manner. Les camps de arrable tre in ceſt pays conſiſt de trees de mults & divers ſeveral perſons giſants interminet in mults & ſeverall petit parcels, iſſint q̄ neſt poſſibl' q̄ aſcū deux ſans treſs al autꝛs poit paſcer lour avers in lour tre demeſne, & pur ceo chaſcun de eux mitte eins lour avers a paſcer promiſcue in le overt camp, ceux parols, baler Shack, ſont tant adire come baler a liberty, ou baler a large: In q̄ le policy dauncient temps eſt deſte obſerve, q̄ le ſeverance des camps in cy petit parcels a tants des ſeverall ꝓpꝛs, fuit da voider incloſure & a maintener agriculture. Mes eſt deſte obſerve, q̄ ſe dit cōmon appel Shack, que al cōmencement fuit forſeꝛ in nature dun ſeodlag pur cauſe de vicinage p̄ avoiding de ſuit, in aſcū lieus deins ceſt pais eſt p̄ cuſtom alter in nature dun cōmon append ou appurtenr, & in aſcū lieus ceo retain ſon oꝛiginal nature, & le rule de ſcād ceo eſt le cuſtom & uſage de chaſcū ſeverall vill', ou lieu, car *conſuetudo loci eſt obſervanda; & pur ceo, ſi in villa de Dale (exempli gratia) un q̄ ad acquir divs ꝓcels enſembl', in q̄ les Inhab' ont uſe da Shack, & long tēps pas ad incloſe l', & nēt obſtāt touts foits oꝑs harveſt les inhab' oꝛ ew Shack la p̄ paſſ. in l' p̄ barrs ou gates ove lour avs, la l' ſra p̄ſ eōe cōmō appēd ou appurtenr, & l'own ne poit exclud eux de cōmō la, nēt obſtāt q̄ il ne voit cōmō ove eux, mes a tein ſes ꝓpꝛes iſſint incloſe in ſeverlty; & l' eſt bn̄ ꝓve p̄ l'uſag', car nēt obſt' l'auncēt incloſur, les inhab' ont ew cōmō la: mes ſi in le ville de S. le cuſtom & uſage ont ee, q̄ cheſc' own in n̄ le ville ad incloſe

* 4 Co. 28. b. 6 Co. 67. a. 10 Co. 140. a.

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lour pꝛoper terre de temps in temps, & iſſint ad teigne ceo in ſeꝛvalty, la ceſt uſage ꝑve, que ceo ne fuit foꝛſqꝫ in nature del Shack oꝛiginalment pur cauſe de vicinage, & iſſint ceo continue, & pur ceo la il poit incloſe & teigne ceo in ſeveralty, & lecludre luy meſme davoir Shack ove les auters: Et cant q̄ in le dit caſe del ville de D. l'uſage ad eſte, q̄ nient obſtant lenclouture p̄ dicꝰ Inhabitants de tardiff temps, les auters Inhabitants ont ewe Shack la, uncoꝛe ſi un home ad auncient cloſe dauncient temps pꝛis hoꝛs del camp, & il & touts ceux q̄ eſtate il ad, ad teigne ceo touts foits in ſeꝛvalty, il bien poit tener ceo incloſe, car qſit a tiel parcel iſſint auncientlie incloſe, le Shack la reteigneꝫ ſon auncient & oꝛiginal nature, & ceſty que claim Shack la, ne poit pꝛeſcribe davoir common in ceo. Nota bon reſolution, q̄ eſtoit ove reaſon, & nul inconvenience, innovation, ou cauſe de ſuits ou troubles ſur ceo poit ſurder, mes quiet & repoſe ſerra per ceo in tiels caſes eſtablys, quel jeo penſe digne deſtre repoꝛt, pur ceo q̄ eſt un general caſe in le dit pais: Et al pꝛimes le Court fuit tout ouſterment miſconuſant del nature de ceſt common appel Shack. Fuit aury reſolve a meſme le temps, que ſi les commons del ville de A. & del ville de B. ſont adjacent, & q̄ l'un doit aver common ove l'auter p̄ cauſe de vicinage, & deins le ville de A. ſont 50 acres de cõmon, & in le ville de B. ſont 100 acres de cõmon, in ceſt caſe les Inhabitants del ville de A. ne potent mitter pluſoꝛs avers in lour common de 50 acres que ceo doit depaſture ſans aſcun reſpect al common deins le ville de B. nec è converſo: Car l'oꝛiginal cauſe de ceſt common p̄ cauſe de vicinage, ne fuit pur profit, mes pur pꝛeventing de ſuits in pais champian, pur recipꝛocal eſcapes de l'un ville in l'auter: Et pur ceo ſi le common del ville de A. doit depaſture 50 avers, & del ville de B. 100 avers, neſt pꝛejudice a l'un ou l'auf, ſi les aꝰs de l'un ville eſcape & depaſture in le common del auter ville recipꝛocalment, car ſi touts les avers depaſture promiſcuè inſemble p̄ imp & p̄ tout, ne ſerra aſcun pꝛejudice a l'un ou l'auter.

4 Coꝛ. 8. b. Co. Lit. 122. a.

Caſes

Cases sur Lestatute de 13 E. 1. de *Winchester*.

Et purview del dit Act est, Que desormes chescun pais serra issint garde, que maintenant apres Robberies & Felonies faits, soit fait fresh Suit de ville in ville, & de pais in pais, &c. & apres le felony ou robbery fait, le pais ne serra plus lodge term que 40 jours, deins queux 40(a) jours conviendra ‡ ils facent gree de la robbery, ou del misfait, ou ‡ ils allegent del nosme des misfeasors: Pour queux pargis diverses resolutions sont este fait. Westm. 1. cap. 9. 2 Inst. 174. 3 Inst. 117, 118. (a) 2 Inst. 477. 1 Sid. 11.

Trin' 27 *Eliz.*

Trin. 27 Eliz. fuit trove per totam Cur' in Com' Banco, en un case ‡ happa en Harlestone en le County de Suff. Que ‡ hole soit rob en son(b)mesne, soit ceo en le jour, ou en le nuit, le Hundred en ‡ le mesne est ne serra charge obr ceo: Car cesti ‡ le fit del dit act fait grestal, sans gier Bascun lieu en special, uncore tiel robbery nest pas deins le dit Act pur 3 reasons. 1. Pur ceo ‡ le mesne de chescun est son(c)castle, & il doit garder & defend ceo a son(d)peril, & si ascun soit rob en son mesne, sra attribute a son negligence & default demesne. 2. Ne list al ascun aut venter en le mesne Bascun put le safegarder de ceo. 3. Tiel robbery, pur ‡ Hundred serra p force del dit Act, covient & apertint bien, issint ‡ le pais post prender notice de ceo de eut mesme (car fuit adjudge in Ashpole's Case pedein ensuant, que ne besoign Bast ascun hue & cry, ou notice fait al pais, neq; p le letter del dit Act de 13 E. 1. neq; p le meaning de ceo, car post este, ‡ le pty rob fuit bound, ou maihem, &c. issint ‡ il ne post fair hue & cry. ou doñ notice al pais) mes quant le robbery est secretment fait en un mesne, ils ne poient prer notice de ceo. Sindil's Case. (b) Cro. El. 753. 3 Leon. 262. 2 Inst. 569. Moor 620. (c) Cro. El. 753. 2 Co. 32. a. 5 Co. 91. b. 8 Co. 126. a. 11 Co. 82. a. 1 Bulstr. 146. (d) 3 Leon. 262. Cro. El. 753.

Trin' 28 *Eliz.* in Com' Banco. Rot' 725.

Inter Ashpole & le Inhabitants de Evenger fuit resolve per tout le Court, que coment que Lestatute est general, & ne fait mention Bascun temps, que le Robbery covient este fait en le *Ashpole's* Case. 1 Leon. 57. 4 Leon. 218. 1 And. 158, 159. Goldsb. 55, 56, 60, 61.

le temps del jour, & hors del(a)nuit: Et la le caſe fuit, Que ſi Robbery fuit fait in January maintenit aps le coucher del ſoiel, durant day-light, & fuit adjudge, que le Hundred reſpondera, pur ceo que fuit temps convenient pur homes a travailer, ou beſtre entour lour ours, ou buſineſſe: Et ove ceo accord le liure en 3 E. 3. tit Corone(b) 293. que ſi un occiſt auter al heur del deſtre, & eſcape, p le common ley le ville ſerra amercy, car ceo eſt accidit en ley pcel del jour, & nemy del nuit.

(a) 2 Inſt. 569. Moor 620. 1 Leon. 57. 4 Leon. 59, 191, 218, 219. Sav. 83, Goldsb. 70. 1 And. 159. Cro. El. 270. Cro. Jac. 106.

(b) 4 Leon. 219. Stamf. Cor. 33. b.

Trin' 29 *Eliz.* in C.B. Rot. 1027.

Milborne's Caſe.

Iſſuet (c) Milborn, & les Inhabitants del Hundred de Dunmow in Eſſex, fuit adjudge, que pur Robbery fait en le matin ante lucem, le Hundred ne ſerra charge, pur ceo que le Robbery fuit fait en le (d) nuit: Et cofnt q̄ nul temps ſoit ſpecifie en Leſtat, uncore p bon expoſition ceo n'extend al robbery fait en le nuit; car nul laches ou neglig' poit eſte arrect al Hundred p̄ default de bō gardet de pais en le nuit: Aury en le nuit ils ne poit fait purſuit aps les offendors, ou inquiry pur eux, & donqs a charger eux quant ils ſont deprive de lour convenient means, ſerra fort dure. Et (come ad eſte ſovent foits dit aplors) eſt bon expoſition dun Statute a expounder ceo ſolonqs le reaſon del common ley; Et al common ley, ſi un ſoit occiſt en un ville p le jour, ceſtaſ-cavoir, cy longe come la eſt plein daylight, & ceſtuy que luy occiſt eſcape, le ville ou ceſt felony fuit fait ſerra amercy pur ceo: Et iſſint eſt tenus en 21 E. 3. tit. Corone 238. Cum quis felonicè occiſus fuit per diem, niſi felo captus fuit, tota villata illa oneretur: Et ove ceo aury accord le dit liure en 3 E. 3. Mes ſi tiel murder ou homicide fuit fait en le nuit, le vill' ne ſerra amercy p̄ le cōmō ley, pur ceo que (come ad eſtre dit) null laches ou negligence poit eſte arrect al Inhabitants del ville: Et Dieu ad ordein le jour pur homes a labourer, travailler, & a fair lour beſoignes, & le nuit a prender lour reſt & repoſe; & pur ceo le Prophet dit, Poſuiſti tenebras, & facta eſt nox, in qua pertranſeunt beſtiæ ſilvæ, &c. ſol oritur & congregat' ſunt, exit homo ad opus & operationem, & redit veſpere: Iſſint ſavage beaſts paſſont & repaſſont en le nuit, & adonques homes ont lour repoſe, & en le jour homes applient eux meſme a lour labors & affairs, & donques les dits beaſts retire eux meſme a lour denns. Et le Poet dit,

(c) Goldsb. 70. 4 Leon. 59, 60, 191. Savil 83.

(d) 2 Inſt. 569. Moor 620. 1 And. 159. Cro. El. 270. Cro. Jac. 106.

Pſalm 104.

Ut jugulent homines ſurgunt de nocte latrones.

Et

Et le cõmon ley eſt, homes ne poient (a) diſtrein pur rent ou ſervice en le nuit, cõe eſt adjudg' en 12 E. 3. tit. Diſtres 17. & 11 H. 7. 5. a accord, ou ſ pur damage feaſant il poit diſtrein en le nuit, pur le neceſſity del caſe, car autrement pavdenture il ne diſtreineſt omnino, car devãt le jour ils poient eſte priſe, ou eſtray hors de ſon fee: Et ove ceo accord 10 E. 3. fo. 21. Et ouſter purview q̃ le dit Act de Winton', q̃ en Cities ou grand villes, q̃ ſont incloſe, les ports doivent eſte firm del ſoliel couchant jeſq̃ al ſoliel levant; puis q̃l ſtat, ſi en tiel City ou ville incloſe aſcun murdre ou manſlaughter ſoit fait en le jour ou en le nuit, & l'offendor eſcape, tiel City ou ville ſera amercy: Car ore l'act ad change le reaſon del ley, & q̃ ceo le ley meſme eſt change, car, Ratio legis eſt anima legis, & mutata legis ratione, mutatur & Lex, car al cõmon ley, ſi home fuit occiſe en le nuit, cõe ad eſte dit, la ne fuit aſc' default en le City ou ville, mes ore ils ne gardont lour ports firm ſolonq̃ l'eſtat, q̃ que le offendor eſcape, donq̃s eſt default & negligence en eux, & ove ceo accord le liure en 3 E. 3. tit. Corone 299. ou le caſe eſt, p̃ient fuit, q̃ un occiſ̃ fuit en le nuit, & demand fuit ou le felõ fuit, & ils diſoient q̃ il eſt fue, & pur ceo q̃ il fuit en le nuit il ne doit eſte charge. Lowther Juſtic̃, q̃ done le rule, dit, le ville ſera firm q̃ l'eſtat de cel heur, & pur ceo q̃ les villours de la ville ne luy p̃iſt point, tout le ville fuit en le mercy. Aury fuit tenus ſur le dit Act de 13 E. 1. q̃ ſi hors cõmit un robery, ceux del hundred covient app̃hend touts le felons, car cõment q̃ ils app̃hendont aſcun de eux, ceo ne ſufficet excuſer eux: Car les pois del Act de 13 E. 1. ſont, q̃ ils reſpond pur le corps de les offendors, q̃ en conſtruc̃ fuit priſe touts les offendors. Mes ore q̃ le Stat de 27 Eliz. cap. 13. novel ley eſt fait in. c̃ auks en ceux points enſuants. ¶ 1. Que nul aya acc̃ ſur le dit Stat, ſinon q̃ le p̃ty robb cy toſt cõe il poit donet notice del dit felony al aſcun des inhabitants d'aſcun ville, village, ou hamlet p̃chein al lieu ou le robbery fuit fait. ¶ 2. S'ils en lour purſuit app̃hend aſcun des offendors, ceo eux excuſet, cõment q̃ ils ne p̃ndront touts. Vide le dit Act de 27 Eliz. que avoit add al dit Act de Winton', & alter ceo en diſ̃s points.

(a) Co. Lit. 142. a. Dr. & Stud. fo. 75. a. 4 Leon 218. Goldsb. 66. 9 Co. 66. a. 1 Roll. 672. Fitz. Avowry 137.

Styles 14.

Cro. Car. 252.

Cro. Car. 299.

1 Sid. 11.

2 Inſt. 172, 175. 1 Sid. 11.

Mich. 28 & 29 ELIZABETHÆ.

Le Countee de *Bedford*'s Caſe.

IN le Court de Gards le caſe fuit; q̄ Frauncis Counte de Bedford eſteant ſeiſie de certain meaſes en le Strond en le Countée de Midd' en tail, s̄, a luy & a les heirs de ſon corps (& ſeiſie dauters t̄res en fée tenus in capite) p̄ fait indent, fiſt leaſes de m̄ les meaſes dont il fuit ſeiſie en tail pur 21 ans, rend̄ rent (queux leaſes ne fueront garrant p̄ Leſtatute de 32 H. 8. mes fuer̄ voidable per les iſſues en tail) & mor̄ſt, le reverſion diſcend̄ a les heirs general del dit Countée, ceſtaſcavoir, a deux files & heirs del Henry Seignior Ruſſel, eigne fits del dit Countée, (que Henry mor̄ſt en le vie ſon pier) & appiert que les dits leaſes fuer̄ dāver continuance apr̄es que le dit files ſer̄ hors de gard: Et per office, puis le mor̄t del dit Countée, fuit trove, que il mor̄ſt ſeiſie del dit eſtate tail des dits meaſes, & q̄ eux diſcend̄ al dits heirs general; p̄ force de q̄ les meaſes fuer̄ ſeiſie en le mains le Roign. Et en ceſt caſe 2 points fuer̄ reſolve. ¶ 1. Que le (a) Roy en p̄vity & droit des h̄es en tail avoidra les dits leaſes durāt le t̄ps q̄ ils s̄r̄ en gard̄: Cõe ſi Eveſq̄ fait leaſe pur ans nient garrant p̄ le dit Stat', iſſint q̄ le leaſe eſt voidable p̄ le ſucceſſ. & mor̄ſt, le Roy avoid̄ le leas, (b) durāt le vac̄ del Eveſq̄, en p̄vity & d̄r̄t del Eveſquery, car le Roy en nul des dits caſes eſt cõe un eſtrang'. Et m̄ la ley eſt, q̄r̄ un ſubject eſt gardien en chival', il en le d̄r̄t del h̄re, deins age & en ſon gard̄, avoidr̄ voidable leaſes, q̄r̄ a ſon inheſt demeſne; mes ceo ne p̄judic̄ l'heir de ſon election al plein age, car Cuſtos ſtatum hæred' in cuſtodia ſua exiſtentis, mel' non deter' facere poteſt. Iſſint, ſi l'heir deins age devant l'ent̄ del gardein, ou l'anceſter, eſteāt deins age, fait leas pur ans rend̄ rēt, le (c) gard̄ poit enr̄ en le d̄r̄t del h̄re, & avoidr̄ le leas. Mes Sir̄ p̄ (d) eſcheat ne avoid̄ voidable eſtates fait p̄ ſon t̄r̄t q̄ fuit enfant; car regularm̄t, nul avoidera voidable eſtates pur cauſe de infancy, ſinon l'infant

(a) Palm. 437.

(b) Lit. Rep. 306.

(c) 3 Bulſtr. 273. Co. Lit. 215. b. 1 Roll. Rep. 402, 442.

(d) 4 Co. 124. 2. 8 Co. 44. 2. Palm. 234, 254. 1 Roll. Rep. 401, 442. Br. Entry cong. 129 3 Bulſtr. 272. 2 Inſt. 483. 49 E. 3. 13. a.

l'enfant meſme, ou les heirs, mes le gardein avoidet les dits voidable leaſes en droit del enfant meſme, & iſſint diverſity: Et l. (a) Roy en le caſe del Eveſque, avoidt le leaſe, en droit del eveſquery, q̃ ad contiſt comt q̃ l'Eveſque ſoit mort. Et ceo fuit un des points adjudge en l'Eſcheqr en le grand caſe ent̃ Auſtine & Sir John Baker an' 2 Mariæ, q̃l jeo ay vieu, & q̃ ſert relate pluis alarge en le reſol' del 2 point de ceſt caſe. Vide 16 Eliz. 337. b. Dyer, Patent̃ del Roign Eliz. des t̃res dõe al pſon, & ſes ſucceſſors a ſuptitio⁹ uſes avoidza aps ſon mort leaſe pur vie (q̃ eſt voidable p le ſuct̃) fait p le pſon, p l'intention del Stat̃ de 1 E. 6. de Chaunteries. Vide 7 Eliz Dyer 239. Hoskin's Caſe. ℂ 2. Fuit reſolve, q̃ comt q̃ le Roy en droit del heir ad avoid ceo pur ſon temps, uncore ceo ne avoid les leaſes, cy abſolutem̃t q̃ les heirs en tail aps l'intereſt le Roy determine ne poient fair eur bon p l'acceptance del rent: Car l'act le Roy ne poit determine l'ection & power des iſſues en tail, ou del ſucceſſor del Eveſque en le caſe mis devãt, a fair les leaſes bõ p l'acceptãce del rent. Et q̃m voidable leaſes, t̃eãt void pur un temps, t̃a touts foits avoid, & q̃m nemy, ceſt diverſity fuit pzile & reſolve p le Court, ſ, quant l'intereſt de ceſty q̃ fait l'avoidance eſt forfeq pur part del term, iſſint q̃ appiert q̃ un reſidue remain; & q̃m ceſty q̃ fait l'avoidance avoid tout l'inteſt iſſint q̃ appiert q̃ nul reſidue poit remain: Et pur ceo in le caſe al barr appiert aps l'inteſt le Roy determine, la remain un reſidue del term: Mes ſi le patron del Eſgliſe de D. grant le prochein avoidance al auter, & puis & devant Leſtatute de 13 le Roign Eliz. le Parſon, Patron & Ordinary font leaſe pur ans rend rẽt, & le Parſon morust, le grãtee pſent, q̃ eſt admit, inſtitute & induct, & morust, ceſt leaſe fuit avoid en tout abſolutem̃t; & p t̃ tiel leas ne poit eſtoier vs le 2 ſucceſſor. 2 E. 3. 8. ſi advowſon dun Eſgliſe per licence ſoit grant al un Prior & ſes ſucceſſors, & puis meſme l'Eſgliſe eſt appropriate a luy & ſes ſucceſſors, iſſint q̃ ils ſont ppetuel Parſons en parſonée; en ceſt caſe ſi la feme del grantor ſoit endow del advowſon & preſent un Clark, que eſt admit, inſtitute & induct, l'appropriatiom̃t eſt defeat a touts jours, car l'entier eſtate del Parſon en Parſonée eſt avoid, & iſſint fuit adjudge come Sir Jeffery Scrope report en 2 E. 3. fo. 8. & en tiel ſenſe eſt le liure deſtre intend. Car comt q̃ la feme fuit endow del Advowſon, uncore ſi el uſt devy devant q̃ aſcun fuit admit & inſtitute a meſme l'Eſgliſe a ſon preſentation, l'Eſgliſe remainera appropriate: Et iſſint un Quære in 6 E. 6. fo. 7. 2. Dyer eſt bien reſolve. Iſſint ſi feme covert (come feme ſole) levy fine aſluy de t̃re dont el eſt ſeiſie en fee a un auter & ſes heirs; en ceſt

(a) Lit. Rep. 306.

(b) Palm. 437. 1 Co. 51. a. Hob. 123, 243. Dyer 337. pl. 58. 3 Leon. 158. N. Benl. 225. pl. 258. O. Benl. 29.

Palm 437.

1 Jones 454. Co. Lit. 46. a. Hob. 7 Cro. Car. 582. 1 Roll. 480. Moor 481.

Co. Lit. 46. b.

Co. Lit 46. b.

Hob. 225. 10 Co. 43. a. Co. Lit. 46. a. 2 Roll. 20.

2 Roll. 20.
10 Co. 43. a.
Co. Lit. 46. a.
1 Jones 457.

caſe ſi le baro̅ ne enter, ceſt fine liera la feme & ſes heirs a touts jours, & en meſme le caſe ſi le baron enter & mozuſt, le conuſee naveta la terre: Car p̄ l'entry del baron, l'entire eſtate del conuſee fuit defeat, & l'auncient eſtate la feme revestue en luy, & le baron ſeiſie del entier eſtate come en droit ſa feme: Et ove ceo accozd̄ 17 E. 3. 52. b. 17 Aſſ. pla. 17. 7 H. 4. 23. 2 Rich. 3. 20. 9 H. 6. 33. Mes quant lozſqz part del eſtate ou term eſt defeat, la eſt autrement, come en le dit caſe enter Auſtine & Sir John Baker fuit adjudge, quel caſe, come jeo meſme ay dete, en effect fuit,

Co. Lit. 46. a.
Plowd. 560. b.
Bridgm. 27.

Sir Thomas Wyat fuit tenant en tail del Manoz de Eaſtſarleigh en le County de Kent, videlicet, a luy, & a les heirs males de ſon cozps, del done le Roy H. 8. a tener de luy in Capite, le reverſion al Roy, ſes heirs & ſucceſſozs. Sir Thomas Wyat per Indenture demiſe le dit Manoz al Auſtine pur 26 ans, rendant 13 l. rent, al dit Sir Thomas & ſes heirs, & puis Sir Thomas Wyat mozuſt, & tout ceo fuit trove per office, & q̄ Sir Thomas Wyat fuit ſon fits & heir male de plein age, per que le Roy ad p̄mer ſeiſin del terre meſme, & pur ſon intereſt avoid le leaſe, & puis Sir Thomas le fits ſuiſt livery, & accept le rent del Auſtine, & puis commit haut Treaſon, pur q̄ il fuit Attaint: En ceſt caſe fuit adjudge, que entant que le Roy ad avoid le leaſe lozſqz quant a ſon p̄mer ſeiſin, que apres livery fait, eſt en l'election & power del iſſue en tail, per l'acceptance del rent, daffirmer le leaſe, pur ceo que le leaſe fuit avoid

Co. Lit. 46. a.

per le Roy lozſqz pur part del term. Iſſint ſi tenant en tail p̄iſt feme, & fait leaſe pur 30 ou 40, &c. ans, rendant rent, que eſt voidable per le heir en tail, & mozuſt, & puis le feme recover ſa Dower, en ceſt caſe le feme avoidera le leaſe, & uncoze, ſi el mozuſt deins le term, l'iſſue en tail poit a ſon election ou affirmer ou diſaffirmer le leaſe. Et fuit dit, ſi

Godb. 325.

tenant en tail fait leaſe pur 30 ou 40 ans, rendant rent, quel eſt avoidable per l'iſſue en tail, & puis tenant en tail mozuſt ſans iſſue, ſon feme p̄ivement enſeint ove un fits, per que le donoz enter, & quant a luy avoid le leaſe, & puis le fits eſt nee. le leſſee reenter, le fits a ſon plein age poit per acceptance del rent affirm le leaſe; Car le leaſe ne fuit unques avoid abſolutement, ne ſimplicit̄er, mes ſecundum quid, & ſur le matter ex poſt facto fuit defeat lozſqz pur temps: Et coment que filius in utero matris, eſt pars viſcerum matris, (Vide 3 Aſſ. pla. 2. 22 Aſſ. pla. 94. 22 Edwardi tertij, tit. Corone 180. Stamf. fo. 21.) uncoze le ley in mults caſes ad conſideration de luy en reſpect del apparent expectation de ſon

1 Leon. 74.
Cart. 87.

neſtre

neſtre, vide l'opinion de Saunders & Browne in Stowel's Caſe, Pl. Com. fol. pur avoiding dun fine, vide temps E. 1. tit. Gard 153. & 31 E. 1. tit. Brief 873. pur le gard luy. Vide 38 E. 3. 7. & 41 E. 3. & 11 E. 3. tit. Voucher q̃ il ſerra (a) vouch en ventre de ſa mere, 11 H. 6. 13. deviſe (b) de ẽre (deviſable p̃ cuſtom) a un en ventre ſa mere, 41 Ed. 3. detenuñt des (c) choſes pur l'heir en ventre ſa mere, 3 Eliz. Dyer 186. adultek̃ councel la feme de murder l'enfant q̃ eſt née, q̃ fait accoꝛd̃, l'adultek̃ eſt acceſſary, uncoꝛe al temps del councel l'enfant fuit en ventre ſa mere. Mes fuit dit, ſi (d) teſtit en tail fiſt leaſe pur 30 ou 40 ans, renõ rent, & puis pꝛiſt feme, & moꝛuſt ſans iſſue, ſa feme pꝛivetñt enſeint ove fits, & puis la ſeñ recover dower del dit ẽre, el devant le neſtre del fits n'avoidera le leaſe, car ſon eſtate eſt quodam modo un continuance del part del eſtate tail, & ceo eſt pꝛove p̃ 10 E. 3. 26. 34 Aſſ. pl. 15. & 23 E. 3. Dower 130 q̃ ſi ſerk̃ (e) attendant del 3 pt̃ de ſervices q̃ tñt in tail ſeſoit, les queux el ne ſerk̃ ſi a touts purpoſes l'eſtate tail fuit tout oulterñt extinct, & teſit en dower eſt eins en le Per p̃ ſon baron & eins de ſon eſtate. Vide Littl. 93. b. in Diſcents. 38 Aſſ. 26. 7 H. 5. 3. 8 E. 2. Entre 75. &c. Vide Dyer 33 H. 8. fol. 51. b. (f) teſtit en tail devant Leſtatute de 27 H. 8. de uſes fiſt feoffñt en fee al uſe de luy & ſes heirs, & aury, devant le dit Act, il & ſes feoffées ſont leaſe pur ans, renõ rent, & puis Leſtatute il moꝛuſt, le terre diſcend a ſon iſſue, q̃ devant entry fuit le termoꝛ levy fine al auk: Et p̃ le melioꝛ opinion des Juſtices bambideur banks p̃ter Saunders l'alienée ne ceo avoidera; car comẽt q̃ le fits fuit remitt uncoꝛe le leaſe ne fuit mereſñt void ſans actuel entry p̃ l'iſſue. Vide Pl. Com. 437.

(a) 38 E. 2. Voucher 237. 1 Roll. Rep. 254. 31 E. 1. brief 873. Cart. 87. 10 Co. 32. b. Co. Lit. 390. a. 9 H. 6. 24. a. 11 E. 3. Vouch. 13. 2 Roll. 746. Hob. 222, 338.

(b) Dyer 303. pl. 51. 1 Sid. 153. Moor 637. Cart. 87. Raym. 83, 84.

(c) 1 Roll. Rep. 254.

(d) Co Lit. 46. a. Bridgm. 28.

(e) Co. Lit. 241. a.

(f) Dyer 51. pl. 17. 1 Roll. Rep. 216. 403. 3 Leon. 154. Bridgm. 27, 103. Co. Lit. 349. a. Moor 315. 2 Bulſtr. 44, 45.

Trin. 33 ELIZABETHÆ Reginæ,

In Communi Banco.

Ughtred's Case.

Jenk. Cent. 260. Hard. 9, 79. 2 Brownl. 98. Doct. pla. 91. 1 Bulstr. 168. Palm. 397.

HEnry Ughtred armiger nper vnek Annuity vers Will' Marques de Winchester filz & heir de John Marques de Winchester, & counta comem le dit John Marques de Winch' 20 die Decemb' anno 17 Eliz. tam pro bona & favorabili affectione & benvolentia quas gessit erga eundem Henricum, quam pro confidentia & fidelitate reposit in eodem Henrico p̄ sou escript constitute & authorise le dit Henry devter Captain del fort du bulwark & castel de Netley, alias Letley, in Com̄ Southampton, a aver & exercifer le dit office del Captain, &c. durant le vie del dit Henry, & donoit a luy authority durant son vie a nominater & appointer de temps en temps un Master Gunner, un Porter & 6 Souldiers, &c. Et ouster, p̄ mesme l'escript, le dit John Marques granta, pro consideratione prædicta, & pro meliore manutentione ipsius Henrici & magistri tormentor', & sex militum in defensione & tuitione castri præd', pur luy & ses hẽes al dit Henry, durant son vie un annuity de 32 l. al feasts de S. Michael & l'Annunciation de nostre Dame p̄ equal portions: p̄ force de q̄l il fuit seisie del dit office & del dit annuity pur son vie: Et puis 10 Nov. ann' 18 Eliz. le dit John Marques mourust, & le Defend̄, son filz & heir, le dit annuity, p̄ 11 ans devant le vnek purchase, subtrahe q̄ en tout amount a 368 l. &c. Sur quel count le Def. demurr̄ en ley, & solonq̄ (a) Lestatute mẽe divers causes: 1. Pur ceo q̄ nappiert p̄ le count q̄ le dit John Mr Marques ad power ou interest a graunter le dit office, & aury pur ceo que le Pl̄ nad averr q̄ il ad exercise le dit office, ne q̄ il appoint un Master gũner, porter, ou les souldiers, & divers auters causes fuer mẽe: Mes hiis non obstantibus judgm̄ fuit done per les Justices del Common Bank pur le Pl̄. Sur q̄ le Seignior Marques port vnek

(a) 27 El. cap. 5,

briefe de Error, & divers Errors fuer assign: mes touts fuer overrule p le Court sozes un, & ceo fuit q̄ le Pl̄ en le briefe de annuity nad averr in son count, q̄ il avoit exercise le dit office, &c. mes apres pluisors arguments & consideration de touts les liures, in q̄r (come semble prima facie) est diversity des opinions, fuit resolve, q̄ le count fuit bon sans tiel (a) averment. Et iour reason fuit, q̄ in touts cases quāt un interest ou estate comence sur cōdition precedent, soit le condition en act destre p̄form p le Pl̄ ou Def. ou p aſcun auter, & soit le condition in affirmative (b) ou negative, la le Pl̄ covient a mēt ceo in son count & averre le performance de ceo; car la interest ou estate comence en luy per le p̄formance del condition, & nemy en luy tanqz le condition soit p̄form: mes auterm̄ est quant le interest ou estate passe maintenant &, dell en le grauntee, & est destre defeat p matter ex post facto, ou condition subsequent, sour le condition ou act destre performe p le Pl̄ ou Def. ou per aſcun auter, & soit le condition en affirmative ou negative, la le Pl̄ poet counte generalm̄ sans averr di p̄formee le ceo, & ceo serra plead p cestuy q̄ voet prend advantage (c) del condition ou matter ex post facto, car chescun poit alledge ceo q̄ (d) fait pur luy, & q̄ est pur son avail, & null serr chase alledger ceo q̄ fait encontre luy. Et bien poit estre q̄ le condition subsequent, ou matter ex post facto, estoit sur mults parts (come en le case al bark ceo happe) hor touts & cesterser serra revious quant issue ne serra p̄se forsq̄ sur un de eux, & le Def. poet pleader q̄l un de eux il pleise en bark del action: & issint le pleading serra pluis brief & compendious, q̄ est le pluis commendable, si ceo soit sufficient. Icy in le case al bark le condition fuit destre p̄form per le Pl̄ meisme, & pur ceo le case est pluis fort, mes pur ceo q̄ le Pl̄, p le dit grant, fuit maintenant seisie del office & de iannuity pur term de son vie, le quel covient destre defeat p le non user del office ou auter matter subsequent, le matter subsequent fait enconter luy, & pur ceo serra plead per le Def. & ove ceo accord 15 H. 7. (e) fol. 1. a b. en briefe de annuity de succesor dun Prior, sur grant fait p son predecessor tanqz il fuit advance a un benefice de S. Eglise, & le Pl̄ count generalm̄, sauns dire, q̄ il est uncore advance: & exception fuit p̄se a ceo pur tiel cause, & nient obstant le cōt agard bon, pur ceo q̄ le condition va en defeasans del annuity, le q̄l vienoza del part dēl Defend̄ destre mēt: auxi, ceo est annuity q̄ commence avant que le cōditiō serra performe le quel performance vienoza del part del grantor, & nient semble ou le condition fuit, q̄ il le (f) grantee face tiel act que donqs il avera tiel annuity, ore sil voet demand ceo,

(a) Hard. 9. 79. Hob. 41. Jenk. Cent. 260. Doct. pla. 91.
(b) Doct. pla. 91.
(c) Doct. pla. 91.
(d) 5 Co. 78. b. Plow. 16. b.
(e) Cro. Arg. 106. Hard. 9. 10. 2 Brownl. 98. Doct. pla. 91. Br. Count. 41. Plow. 25 b. 32 b. 272. b. 273. a. Palm. 192. Plow 272. b. 273. a.
(f) Doct. pla. 91.

ceo, il covient alledger en fait q̄ le condition eſt perſorm, car per le perſormance de ceo lannuity commence: & iſſint diverſity per omnes Juſticiarios, & ceux ſont les pois del liure. Iſſint eſt dit en Colthirſts Caſe Pl.Com.25.b. ſi jeo grant a un q̄ quant il ſerra p̄mote a un benefice, que il aver annuity, ſil demand annuity il doit p̄imes mke q̄ il eſt p̄mote a un benefice: mes ſi lannuity ſoit grant a un tanq̄ il ſoit p̄mote a un benefice, la il ad̄a dꝛiet de annuity, & ne mke q̄ uncore il neſt p̄mote, pur ceo q̄ lannuity p̄cead, & le p̄motion eſt ſubſequent, & va en defeaſaunce del annuity; & pur ceo doit eſtre mke del contrary part. Mes quant (a) home neſt pas intitle ſoꝛiq̄ a un action, & ceſt actiõ ne giſt ſinon le condition ou conſideration ſoit perſorm, la le p̄r en ſon count doit mke le perſormance; car ceo amount a un condition p̄cedent, pur ceo que laction comence ſur le condition ou conſideration perſorm, come le liure eſt en (b) 3 H.6.33.b. Mitto. mus que jeo retain (c) un dñe oue moy al Rome p̄ 40 s. icy, p̄ le aier comence p̄imerm̄t le caſe del duty, in q̄l caſe il poꝛt dꝛiet de det de tel en ſon coũt il coviēt declare q̄ il fuit la, ou autrim̄t le count abatera. Iſſint eſt, ſi jeo (d) retain un de ſerver moy pur 40 s. per annum; car icy p̄ le conſideration perſorm comence le duty, iſſint q̄ ceo eſt en nature dun act p̄cedent: & ſic fuit lopinion de tout le Court in le dit liure. Mes le caſe en (e) 48 E.3.3 & 4. fuit affirm pur bon ley, ou appiert q̄ indentures fuer faits int̄ Sir R.Pool Chivaler de lun part, & Sir R.Tolcelſer del auter part, p̄ q̄r Sir Raſe covenant oue Sir Rich. de ſerv̄ luy oue 3 eſquiers des armes en la guerre de France, & Sir Rich. covenant pur ceo a payer a luy 42 marks: en ceſt caſe chescun party ad oiel remedy, lun pur le ſervice, & lauter pur les deniers, & pur ceo, in det pur les 42 marks, il poet eſlier de counk en general ou en eſpecial, a ſa volunt, p̄ le rule del Court. Auri quāt un enterelt paſſe maintenant & eſt deſk defeat p̄ matter ex poſt facto, uncoꝛe ſil appiert al court p̄ matter en ley, q̄ laction ne ſerra maintainable ſans mẽs del perſormance del condition ou cõſideration, la le p̄r covient daverrer ceo pur maintenãce de ſon action; come en 39 H.6.21,22. le caſe fuit, R.Abbot de Cheſter grant a John Brewin ak p̄ ſon fait (ſans le conſent del covent) un annuel rent de 40 s. hoꝛs de ſon monaſtery pro cõſilio ſuo eidē R.abbati & (f) conventui ejuſdem loci impenſo, & impoſter' impendend': le dit R. Abbot mozuſt, & John Brewin poꝛt dꝛiet dannuity vers le ſucceſſoꝛ, & averk, q̄ il aver done al dit R.nup' abbati & conventui conſiliū ſuum, apud W. in negotiis domus præd'agendis, ad proficuum ejuſdem domus: & Priſot & tout le court

(a) Doct. pla. 91.

(b) Br. count 5, Palm. 397. 1 Bulſtr. 168. Poph. 161. Doct.pl.91.

(c) Doct.pla. 91. Popham. 161. Jenk. Cent. 260.

(d) Hob. 41,106.

(e) Doct. pla. 92. 1 Bulſtr, 168. Popham 161. Palm. 397, 398. 1 Rolls 414,415. 1 Sand. 320.

(f) Doct.pla. 92.

Court tient, q̄ laction ne ſuit maintenable vers le ſucceſſor ſans tiel (a) averrīm; car laction nest maintenable vs le ſucceſſor, de nul contract ou graunt fait p Labbot ſolemēt ſans le Covent, ſinon q̄ le effect ou conſideration de ceo vient al p̄fit del meaſon; & que tiel general averrment ſuit bon, car ſer̄ trope long a mr̄e touts les cauſes ſpecialm̄t, & pur ceo vs le ſucceſſor il doit p̄nder tiel averrment: Mes in action vers Labbot (b) meſm̄, q̄ firſt le grant, ne beſoign de p̄nder tiel averrm̄t, come eſt agrée la per tout le Court. Et ſ̄ilm̄t p̄ ceux diu̇ſitties, 1. Inter intereſt ou eſtate veſt, & q̄ eſt deſtre devēſte p condition ou mat̄ ſubſequent, & condition ou mat̄ q̄ p̄ceve leſtate ou le intereſt. 2. Inter chaſe en action q̄ on judgm̄t del ley eſt a commencer ſur condition ou conſideration p̄cedent, & enterests ou eſtates q̄ comence maintenant. 3. Quant owel remedy eſt done al ambideux, p̄ reciprocal Covenants. 4. Quant p̄ matter apparent laction le p̄r ne ſer̄ maintain ſans averment, com̄t que ſoit en caſe dun eſtate ou intereſt veſte, vous mieulx entendrez cēs liures, q̄ ſemblont prima facie a diſcorder (c) 21 E. 4. 49 b (d) 22 Ed. 4. 43 a. 9 E. 4. 20. b. 37 H. 6. 8. b. 36 H. 6. 2 b. Dyer 10. Eliz. 270. in Avowry, & 15. Eliz. 329. in Dette.

(a) Jenk. Cent. 260, 261. Doct. pla. 92.

(b) Cr. Eliz. 546. Doct. pla. 92.

(c) Br. Count. 72. Br. Annuity 38. Doct. pla. 90.

(d) Hard. 10. Doct. pla. 90, 91.

Et nota, le dit Ughtred ad judgm̄t en le Common Bank, Quod præd' Henricus recuperet verſus p̄fatum nunc Marchionem, annuum redditum præd' & arreragia ejuſdem, tam diu ante diem impetrationis br̄is original' ip̄ius Henrici, quam poſtea incurſa, & damna ſua occaſione ſubtractionis annui redditus præd' ad decem libras, eidem Henrico ex aſſenſu ſuo per Curiam hic adjudicat': Quæ quidem arreragia & damna in toto ſe attingunt ad 402. libr̄. Et præd' nunc Marchio in miſericordia.

Mich'

Mich. 33 & 34 *ELIZABETHÆ*, In Scaccario.

Englefield's Caſe.

1 Anderſ. 293, 294. Poph. 18, 19. Moor 303, 304, 305 4 Leon. 135, 136, 137, 169, 170, 171. 2 Rolls Rep. 142, 323, 324, 420. Lane 44. 3 Keb. 316. 3 Inſt. 19, 180. Palm. 437, 438, 439.

INter le Roign, & Margaret Englefield, Francis Englefield, & auters, en Inforꝛmation ſur intruſion in Leſchequer, q̃ comence Tr. 32 Eliz. le caſe fuit tiel en effect. Sir Francis Englefield ſeiſie del Manoꝛ de Englefield in Com̃ Berk. en fee, per Indentur̃ dated 2 Januarij, anno 18 Eliz. enter lup & le dit Francis Son Nephew, covenant pur advancem̃t de ſon ſank, &c. a eſtoier ſeiſe al uſe de lup meſm̃ pur vie, & puis al uſe de ſon dit Nephew, & les hẽes males de ſon coꝛps, & puis al uſe de dꝛoit hẽes del Nephew: Et fuit ouſter contain en le dit Indenture, q̃ pur ceo q̃ ſon Nephew fuit Enfant, iſſint q̃ ſon pꝛoof ne adonq̃s fuit view, & pur ceo le uncle ne penſa convenient a ſetler le dit inheritance en le Nephew abſolutem̃t, cy longment come le uncle viveroit, ſans frene pur reſtrainer lup, ſi aps il ſra ꝓdigal, ou ſerra done al intollerable vices; a ceſt cauſe fuit ꝓvide, q̃ ſi le uncle ꝑ lup meſm̃, ou ꝑ aſcun auter, durant ſon natural vie, deliver, ou offer al Nephew, un anule del oꝛ, al entent de fair void les uſes, q̃ donques touts les uſes ſer̃ void. Hill. 26. Eliz. Sir Francis fuit indict en Bank le Roy, per enqueſt del Midd', pur Treaſon fait al Nemures en Hanonia in ꝓtibus tranſmarinis, 20 Octob. 18 Eliz. ſur quel indictam̃t il fuit utlage: & puis 8 Auguſti 28 Eliz. le Roign, per patent deſouth le grand ſeal, leſſa le ter̃ al Foſter & Fitton, deux de les Def. pur 40 ans, & auxy demiſa al eux pur 40 ans, omnes & ſingulos boſcos, ſubboſcos, arbores, & terras boſcales: & puis al Parliament 29 Oct. Anno 28 Eliz. lattaindr̃ fuit confirm; & ouſtr̃ fuit enact, q̃ il ſer̃ attaint de hault Treaſon, & foꝛfeiter̃ al Roign touts ſes Manoꝛs, terres, tenem̃ts, &c. le jour de le treaſon com̃is, ou a aſcũ temps aps, & q̃ ſra in actuel poſſeſſion le Roign ſans office: Mes ouſtr̃ fuit purview, ꝑ m̃ le act, q̃ riens in ceo extenderoit a fair void aſcun leas de terre, ou done de bies, fait ꝑ le Roign ſouth le grand ſeal, ou Leſcheqr ſeal, puis le treaſon fait, &c. Et a m̃ le pliam̃t un autr̃ act fuit fait, ꝑ q̃ fuit Enact, That every perſon and perſons, which hath, or claimeth to have any eſtate or intereſt, of, in, or out of any Land of any of the perſons attainted ſince 18 El. not inrolled

2 Rolls Rep. 391. 1 Ventris 129. Latch. 28. Palm. 438. 1 Jones 136.

29 El. cap. 3.

led of record, not certified into the Exchequer, made ſince 1 *Eliz.* by any of the perſons attainted ſince 18 *Eliz.* of Treaſon, for conſpiring of the Queens death (come le dit Treaſon de Sir Fr. Englefield fuit) within two years after the laſt day of this Seſſion of Parliament, ſhall openly ſhew, and bring forth, into the Queens Majeſties Court of Exchequer, the ſame his, or their grant, conveyance, and aſſurance, and there in the Term time, in open Court, the ſame ſhall offer and exhibit, or upon his, or their Oath, affirming that they have not the ſame, nor can come by it, or that it was never put in writing, then the effect thereof to be entred and inrolled of record, Or elſe every ſuch Conveyance and aſſurance ſhould be void and of none effect to all intents and purpoſes: Saving to every perſon and perſons (other than parties and privies to ſuch Conveyance, and ſuch as ſhall not exhibit the ſaid Conveyance according to the true meaning of this Act) all ſuch right, &c.) Et puis 17 Mar. 31 Eliz. le Roign, p ſes lres patēts deſouth le grand ſeal, recitant les uſes, & le ꝓviſo del tendering dū anule, & q̄ le benefit & advantage del dit cōdition eſt done a luy p les Statutes de ceſt Realm, depute, authorize, & en ſon lieu & ꝓſon ad mis R. Broughton & Hen. Bouchier joyntm̄t & ſeveralm̄t, pur deliver ou offer le anule de oꝛ al Englefield le Nephew, al entent de fair void les uſes en lendentures, & q̄ ils certifier̄ en Leſcheq. ceo q̄ ils fairont en les p̄miſſes. Broughton & Bouchier 18 Mar. anno 31. offer le anule (& lie a luy le Patent) al dit Francis le Nephew, q̄l il refuſa; tout q̄l fact ove le patent ils certifiōt en Leſchequer 19 Mar. 31. Et le vie de Sir Francis fuit adō. &c. Et les Def. fuer charge pur Intruſiō 20 Mar. 31 Eliz. & ove le ſuccō de certain trées de Elm & Aſh, & de certain ſubboys. Et en ceſt caſe aps pluſoꝛs arguñts al barr̄, & ſur oyt arguñt al bench, ceux points fuer reſolve. 1. Le Roign fuit tēant pur auer vie, & fiſt les pur 40 ās, com̄t q̄ le Roign (atāt ſoꝛigꝛ eſtate pur auer vie) ne poit abſolutem̄t cōtracter pur leas pur 40 ans, uncoꝛe ſans aſcū recital ou m̄ciō de eſtate pur vie, le leas eſt bō, car le leas pur ans eſt en judgm̄t de ley meinō q̄ leas pur auer vie, & le Roign ne fait aſcū toꝛt ou p̄judice a aſcū p le demiſe, & Moor 321. neſt deceive en ſon grant; car en judgm̄t de ley, ceo eſt leas pur 40 ās, ſi ceſty q̄ vie cy lōgem̄t viva: Mes ſi le Roign uſt grant greinō eſtate q̄ el loyalm̄t poit, come eſtate en tail, ou en fee, la pur ceo q̄ el ne poit loialm̄t ceo fair el fuit deceive, & p cōſeq̄s ſon grant void. Vide oꝛe le caſe de Altō Woods, in le prim'part de mes 1 Co. 50. b. &c. Reports. Et fuit dit, q̄ ſi le Roign grāt tot' ſtat' ſuū (atāt term̄ ou eſtate pur vie, exter, ou auer priculer eſtate) q̄ ceo eſt aſſets bō, car le

Roign

Roign ne grant pluis q̄ el poit p̄ la ley, ne fait aſcun (a) tort ou alteration daſcun eſtate p̄ ſa grant. Et fuit object, q̄ ceſt conditiō ne ſerra done al Roign p̄ leſtatute de 32 H. 8. cap. 20. & ceo pur 3 reaſons. ¶ 1. Ceſt condition eſt annexe al Sir Francis, ove tiel inſeperable p̄ivity, q̄ ne poit eſtre done al auter; car in ceſt caſe le ſubſtance del conditiō eſt le entent & ment de Sir Fr. mes pur ceo q̄ ſon entent & ment ne poit appearer ſans overt act, a ceſt cauſe le anule ſerr̄ tender, come declaration de ſon entēt, q̄ fuit inward & ſecret a luy meſm̄e; iſſint q̄ le tēder del anule n'eſt forſq̄ le outward ceremony, mes le ſubſtance del condition eſt le ment & volunt de Sir Francis, que ne poit eſtre transferr̄ al auter. Aury in ceſt caſe nature eſt fait Judge, car le uncle eſt da judger del quality & diſpoſition del Nephew, & le q̄l il done cauſe a ſon uncle a revoker & diſanuller ſon eſtate, & pur ceo, ſi come natural amour & affectiō ne poit eſ transferr̄ al auter, iſſint ceſt conveyance, de q̄l natural amour & affection eſt le cauſe de creater de ceo, & le judge del determinatiō de ceo, ne poit eſtre revoke ou determin p̄ aſcun auter, & tout ceo accord ove le reaſō del comon ley; Car le (b) ward del eign fits, q̄ le ley de natur done al pier, eſt inſeparable, & ne poit eſtre forfeit ne transferr̄ al aur̄, come eſt agree in 33 H. 6. & homage auncestrel eſt inſeparabl̄, pur ceo q̄ ceo eſt annexe al ſank del ſeign̄ior & del tenāt. ¶ 2. Per geñal p̄ols del dit act de 33 H. 8. conditions ſepable, & q̄ poient eſtre p̄forme p̄ auters, & nemp inſepable, ſont done al Roy, come appiert p̄ diūs caſes foundus ſur geñal Acts de Parliamēts icy mis, & agree aps. ¶ 3. Fuit object, Que ceo eſteant un collateral condic̄, coñ q̄ le cōditiō ſoit done al Roy, s. le bēnefit de ceo, ſi ceo ſoit p̄forme, uncor̄ le p̄formāce de ceo n'eſt pas done al Roy p̄ le dit act; & pur ceo Sir Fr. covient tend̄ le anule, & nemp le Roign. Et pur ceo, poſito q̄ le condic̄ uſt eſtre, ſi le chief Juſtice Dengletere pur le tēps eſteāt, tendra un anule aps lattaind̄ del Sir Francis, le Roign ne poit tender: & le reaſon de les liures en 12 H. 4. 2. & 9 H. 7. 17 & 20. 4 H. 8. Dyer 1. &c. fuit urge, ou collaterol (c) cōditiōs ne poiēt eſtre alter, & auks choſes accept en ſatisfactiō de eux inc̄ m̄ les ptie; à fortiori icy, car icy le plon q̄ p̄ erp̄ſſe pols doit p̄former le cōdic̄ ꝑa chaunge. Quant al 1 & 2 objectiōs, Manwood chief Baron, & tout le Court teignōt, q̄ tout le force & effect del condic̄ en le caſe al bar̄ conſiſt ſur le tēder del anule, & lauter matter del reaſon & cauſe, que move & induce luy de layſer le dit power & frene in luy meſm̄, ne fuit aſcun p̄cel d̄ p̄uiſo, mes un (d) floriſh, come il ceo term, & p̄reamble, & riens eſt parcel del condition, mes ceo q̄ vyent aprēs le p̄uiſo,

(a) 5 Co. 55. b.
1 Co. 44. b. 52. b.
Dav. 75. a. b.
11 Co. 72. a.
2 Inſt. 681.
Co. Lit. 19. b.
13 E. 4. 8. a.
Plow. 246. b, 487. b
Cr. Argument 60.
1 Rolls Rep. 167.
Noy 182.
Moor 416.
Godb. 317.

(b) Vaugh. 180.
33 H. 6. 55. b.
7 Co. 33. b.
Calvin's Caſe.
3 Co. 39. a.
Plow. 294. a.
2 Inſt. 234.
Br. gard 6.
Br. forfeiture 70.
Co. Lit. 84. b.

(c) 9 Co. 78. a. 79. a
1 Rolls 455, 456.
2 Brownl. 131.
1 Rolls Rep. 296, 297. Cr. El. 46, 193, 304, 458.
3 Bulſtr. 148, 149
Co. Lit. 212. b.
Perk. 145. b. 146. a.
Hob. 178.
Palm. 550.

(d) Latch. 71.
Palm. 435.

ꝓviſo, & ceo eſt le tender del annule. Et quant a ceo, le dit diſ-
ſity fuit ꝓpoſe, & agreé per tout le Court, ſ. inter conditions q̃
ſont perſonal, & individual, & ne poyent eſtre perform̃e p̃ aſcun
auter, & conditions q̃ ne ſont cy inſeperablem̃t annexe al ꝑſon,
mes q̃ ils poyent eſtre ꝓform̃e per aſcun auter; come fuit reſolve,
en le caſe de Thomas Duke de (a) Norff. q̃ en Anno 11 Eliz. cõ-
vey ſes terres al uſe de luy meſm̃ pur vie, & puis al oeps Philip
Counte de Arundel ſon eygñ fits en tail, ove divers remain-
ders ouſter, ove ꝓviſo, que ſil ſerra minded de alter & revoker
les dits uſes, & ſignifiera ſon ment en eſcript deſouth ſon ꝑper
main & ſeal, & ſubſcribed p̃ 3 credible witneſſes, que donq̃s, &c.
& puis le dit Duke fuit attaint de hault Treaſon, que ceſt ꝓ-
viſo ou condition ne fuit done al Roign per le dit Act de 33 H.8.
pur ceo que le perform̃ance de ceo fuit (b) ꝓfonel, & inſeperablem̃t
annex al ꝑſon, ceſtaſcavoir, a ſignifier ſon ment per eſcript de-
ſouth ſon ꝓper main, que nul auter poit fair, mes le Duke
meſme; Sur q̃l point touts les poſſeſſions del Dukedom iſſint
conbey ut ſupra, fueront ſave, & nemy forfeit per lattainder.
53 H.6. 56. Les Templers teignont divers de lour poſſeſſions
en frank (c) almoign (q̃l tenure come Litt. dit, eſt annexe en ꝓ-
vity al ſank le donor) & puis ils fuer̃ diſſolves, & per Parliam̃t
Anno 17 E. 2. lour poſſeſſions fuer̃ done al Hoſpitalers, a tener
eux en meſm̃ le manner come les Templers teignont; uncor̃
ils p̃ ceux geñal pois ne teigneront en frankalmoigñ, pur ceo q̃
le ꝓvity del tenure del ꝑt le teñ ne continue, & ceſt ꝓvity eſteãt
ꝓfonel, & inſeperabl', p̃ general pois del act, ne fuit transferre al
Hoſpitalers. Meſme le ley dun impꝛopꝛiation dun Eſgliſe, que
aury eſt incident inſepable al meaſon de Religion a q̃ leſgliſe
eſt impꝛopꝛiat: Et pur ceo eſt adjudge en P. 3 E. 3. (d) q̃ les
Hoſpitalers p̃ le dit act de 17 E. 2. naveront le impꝛopꝛiatiõ, car
ceo fuit inſeperablem̃t annexe al corꝛoꝛation des Templers, q̃l
choſe, conſiſtant en inſepable ꝓvity, per general pois dun Act
de Parliam̃t ne ſerra transferre al auters. Iſſint fuit adjudge
Trin. 25 El. in le Marqueſs de Wincheſters Caſe, (quel vide in le
3 part de mes Reports) q̃ per geñal parols de touts hereditam̃ts,
&c. un bꝛe de (e) Erroꝛ q̃ plõ attaint avoit ne fuit done al Roy,
car bꝛe de Erroꝛ eſt bꝛe q̃ gift in ꝓvity: Et le chief Baron dit,
q̃ il ne voy unq̃s en aſcun Act de attaind̃, (f) actions q̃ appent
al ꝑſon attaint done al Roy. En tẽps H. 8. Brook tit. Corody 3.
eſt tenus, q̃ un (g) Founderſhip, q̃ aury eſt choſe annere inſepa-
blem̃t al ſank del foundor, ne ſerra forfeit per attainder, vide l.
5. E. 4. Mes en le caſe al bar̃, le condition, ſ. le tender del annule,

(a) Latch. 107. Mod. Rep. 17, 38. 40. Hob. 342. 1 Ventr. 129. 2 Rolls Rep. 391. 394. Latch. 27, 29 69, 70, 71, 103. Palm. 435. O. Benl. 139. 1 Jones 77, 135. 136. Styles 196.

(b) Palm. 119.

(c) Latch. 69, 71. Lit. Sect. 141. Co. Lit. 99. a. 3 Co. 3. b. Moor 312 322. 35 H.6. 56 b. 57. a. Moor 163.

(d) 3 E. 3. 11. b. pl. 1 3 Co. 3. b. Moor 530, 531. Fitz. grants 70. Plow. 497. a.

(e) 4 Leon. 172, 173, 174. Moor 323 Latch. 30, 69. O. Benl. 139. 2 Rolls Rep. 319, 324, 374. 1 Leon. Rep. 371, 372. Moor 125. Lit. Rep. 100. Cr. El. 389. Owen 21. 3 Co. 2. a 3. b. 1 Jones 77.

(f) Hob. 341. 2 Rolls Rep. 325, 420, 501.

(g) Co. Lit. 99. a. b. Moor 322. 4 Leon. 138. 11 Co. 77. a.

anule, neſt pas anner al perſon de Sir Francis, mes cheſcun auter poit ceo fair cibien come luy meſme. Meſme la ley de payment de mony, delivery de eſperons de oxe, ou auters ſembles. Quant al 3 objection fuit reſolve, q̄ quant le ſtatute done le cō-dition al Roign, q̄ le pfoxmance de ceo (que neſt pas perſonal & inſeperable) eſt done auxy al Roign, come incident a ceo; car le pfoxmance eſt le ſubſtance & effect del condition, & leſtatute mit le Roy en le lieu del pſon attaint a fair ceo pur le pfoxmāce del condition, q̄ eſt feaſible, & q̄ neſt pas inſeperablement anner al perſan de ceſtuy q̄ eſt attaint. ¶ 4. Fuit object, que coment que le condition ſerra done al Roign & le perfoxmance de ceo auxy, uncor̄ le leaſe ne ſerē void, car leſtate pur vie de Sir Francis ne fuit ſubject al condition : car un (a) uſe al coūon ley fuit un truſt & confidence repoſe en un pſon, q̄ auter pſon avera les pfits, iſſint q̄ covient eſtre ſeperation del poſſeſſion, & del uſe, ou p̄ covenant, ou p̄ feoffm̄t, fine, ou auter conveyance, p̄q̄ eſt un tranſmutation del poſſeſſion : mes en nūe caſe, il meſme eſtoiera ſeiſie al uſe de luy meſme pur vie, q̄ ne poit eſtre come un uſe, car il meſme eſt terē tenant, & neſt aſcun ſeperation del poſſeſſion, & neſt aſcun truſt ou confidence, & il ne poit aver Subpæna vs luy meſme avevant le ſtatute; & le ſtatute de * 27 H. 8. execute poſ-ſeſſion a ceſty ſolem̄t que ad un uſe, & que nad poſſeſſion devāt : mes Sir Francis en nūe caſe ad le poſſeſſion devāt, & pur ceo le ſtatute ne poit doner poſſeſſion a luy, mes ſon eſtate pur vie fuit parcel de ſon veiel eſtate. Auxy Nota, leſtatute de 27 H. 8. dit, al uſe dun (b) auter pſon, &c. iſſint q̄ auter perſon covient dāv̄ le uſe que ceſty q̄ ad le poſſeſſion. Vide 30 H. 8. tit. Feoffments al uſe Br. 47. ceſty q̄ uſe en tail devant leſtatute fuit inſeoff p̄ les feoffées, & puis leſtatute de 27 H. 8. fuit fait, leſtatute ne do-nera a luy poſſeſſion en tail ſolongz le uſe, pur ceo q̄ il ad le poſ-ſeſſion devant, pur ceo q̄ ne fuit ſeperation del uſe & poſſeſſion al temps del feaſance del ſtatute. Et donques ſi leſtate pur vie ſoit parcel de ſon veiel eſtate, ceo neſt pas ſubject al dit pviſo ou condition, & per conſequence per le perfoxmance del condition leſtate pur vie neſt defeat, & donques le leaſe pur 40 ans que eſt derive hoxs de ceo remain bon. Mes fuit reſolve per le Court, que Sir Francis ad le eſtate pur vie per le limitation del uſe & operation del ſtatute de 27 Hen. 8. & ils mult reliant ſur le reaſon & Rule de Baintons Caſe en Plowd. Comment', que home pur advancement (c) de ſes heirs males poit cove-nanter, a eſtoier ſeiſie al uſe de luy meſme & ſes heirs de ſon coxps : en ceſt caſe eſt nul ſeperation del poſſeſſiō & uſe, & uncoxe leſtatute

(a) Co. Lit. 272. b. 1 Co. 121. a. Mod. Rep. 39. 1 Anderſ. 318. Plow. 352. b. Poph. 71.

* 27 H. 8. cap. 10.

(b) 13 Co. 56.

(c) 2 Rolls 785. Plow. 309. b.

leſtatute create un eſtate en tail en poſſeſſion en luy, en quel caſe tout leſtate tail eſt en luy meſme; mes ceo eſt pur le benefit del heir male, coment que il eſt in futuro, & nemy in præſenti, car nul poit ſcaver que ſerra ſon heir male, (a) ſolus Deus facit hæredes, non homo: mes en ceſt caſe ceo eſt pur le benefit del Nephew in præſenti, daver les uſes raiſe ſolonque les dits Indentures. ¶ 5. Fuit object, que coment que leſtate pur vie ſoit defeat per le condition, uncore le Roign ne avoidera ſon leaſe demeſne: Car quant le Roign ad eſtate pur auter vie, & aury condition en luy per leſtatute de triceſimo tertio Hen. 8. & el fait leaſe pur ans, coment que le Roign perform le condition, el navoidera le leaſe. Come ſi en tiel caſe un comon perſon uſt ewe leſtate pur vie, & le Roign le condition, & le common perſon uſt fait leaſe del terre, & le Roign uſt confirm ceo, & puis le condition eſt perform, uncore le (b) leaſe eſt bon. Et ſi le morgagée fait leaſe pur ans, & le morgageor confirm ceo, & puis le condition eſt perform, le leaſe ne ſerra avoid. Et le caſe dun Arden fuit cite. Tenant en (c) tail fait leaſe pur vie, ore il ad gain novel fée per tort, & puis il graunt rent charge, ou fait leaſe pur ans, & puis Tenant pur vie morust, il navoidra ſa charge, ou leaſe, coment que il ſoit eins dun auter eſtate, pur ceo que il avoit defeaſible poſſeſſion, & antient droit, le queux ſi ſoient en ſeveral mains ſerra bon, come leas de lun, & confirmation de lauter, & eſteant en lun main, ſerra tant en judgment del ley. Nota le leaſe eſt le pluis fort caſe que le charge. Undecimo Hen. 7. 21. a. Edrich Tenant en tail fait feoffment a ſon uſe ſur condition, & puis ſur ſon recogniſance le terre eſt extend per leſtatute de primo Rich. (d) tertij, & puis el perform le condition, uncore le intereſt del conuſée ne ſerra avoid, & uncore leſtate eſt change, Cauſa qua ſupra. Et tout ceo fuit affirm per Curiam. Mes quant a ceo fuit reſolve, que le demiſe le Roign ne enurera (a ſon ſpecial prejudice) a (e) 2 entents, S. a un demiſe del terre, & aury a un ſuſpenſion de ſon condition per que el poit defeater leſtate pur vie, & les auters Eſtates come ſerra en le caſe dun common perſon, ou a un demiſe en reſpect de ſon preſent eſtate pur auter vie, & aury a un confirmation en reſpect de ſon condition, per q autrement el poit defeater tout, come ſerra aury en le caſe de common pſon: Car le grant le Roy ſerra priſe ſolonque ſon expreſs intention comprehend en ſon grant, & ne extendet al aſcun auter choſe per conſtruction,

(a) 2 Rolls 785. Co. Lit. 7. b. 2 Inſt. 564.

Co. Lit. 301. a.

(b) Moor 325. 2 Rolls Rep. 320, 340. Godb. 311, 314, 323.

(c) Moor 325. Poph. 50. 1 Co. 147. b. Co. Lit. 343. a. Br. condition 249. 2 Rolls Rep. 320.

(d) 1 R. 3. cap. 1. 1 Co. 147. a.

(e) Lane 101.

Poph. 150. b.

ction, ou implication, que nappiert per son grant que son entent extendu; & pur ceo en tiels cases, le Roy covient estre bien instruct, & il doit fair especial & particuler grant, que p express parols poit enure a touts tiels several intents come sont deslre. Come en 17 E. 3. 39. (a) Advowson tenus del Roy
3 Co. 56. a. est Alien a un Abbot, ore le Roy ad title al advowson pur le mortmain, & puys le Roy p ses letters patents grant al Abbot q̄ il poit tener ladvowson in proper ops, uncore il ne perdera advantage del mortmain, car quant le Roy ad 2 droits en luy, il ne poit exclude luy de ambideux sans special parols. Vide 9 H. 7. 14. Plowd. Comment. 397, &c. Et si en cest case le demise le Roign amountera a un confirmation per force de son condition, ou si le demise amountera a un suspension del condition, donques sur ceo ensuera, que el durant le Term ne poit performer le condition, quel serra graundment prejudicial al Roy. ℭ 6. Et quant al dit tender per force des dits letters patents, & le certificate del ceo en Leschequer, fuit object, que ceo ne serra sufficient, mes le tender covient estre trove per office, car coment que les letters patents sont de record, uncore le tender mesme est matter en fact, quel covient estre trove per office; car certificate de Evesq̄ per force del brief
Dost pla. 352, 370. le Roy, ou del Marshal del host le Roy, come en 2 Edw. 4. fol. 1. queux & autiels semblables ne sont traversable, mes sont trials en ley, & iyera les parties: Mes en nostre case, si cest certificate, que nest fait sur ascun ordinary course de proceeding, serra bon en ley, serra grand prejudice al party, car nul certificate que est allow & garrant per le Common ley est traversable; & donques le matter poit estre faux, & le party disherite, & uncore il navera ascun remedy, le quel serra inconvenient. Mes fuit resolve per totam Curiam, que le tender &
Latch 71. Moor 335 Dost pla. 352, 370. certificate en cest case fuit assets sufficient, & q̄ le party greeve si ceo soit faux, poit traverse ceo, & ne serra conclude per ceo, car ceo ne fuit en nature dun trial, mes dun record a informer & satisfier le Roign de sa title. Auxy fis resolvont, que maintenant per le tender del anule solonque le dit proviso, ou condition, les uses fueront determin, & nul en ley, & per consequence, le terre vest en le Roign per force del attaindre &
33 H. 8. cap. 20. del act de tricesimo tertio Hen. octavi. ℭ 7. fuit object, que le dit conveyance unce fuit void per le dit de, 28 Elizabeth. & donques fuit Sir Francis al temps de son Treason commit & attaindre sur ceo, seisi des dits terres en fee queux fuer

forfeit

forfeit al Roign, & vest en luy p le dit act de 33 H. 8. & p consequens le dit leas fait per le Roign (estcant al temps de leasance de ceo seisie en tre) est bon: & a prover q̄ le conveyance fuit void per lestatute devant le dit tender del anule, issint que lestate ne fuit defeat per le condition, mes le conveyance en que le condition fuit contain fait void per le act de 28 Eliz. devant le dit tender del anule, & devant le lease fait; le letter del statute est, que chescun person, &c. within two years after the last day of that Session, shall openly shew and bring forth into the Exchequer his Conveyance, and there in the Term time in open Court shall exhibit, &. the same to be entred and inrolled of record, &c. & le tender del ring fuit 18 Martij an' 31. dev̄at q̄l jour touts les Termis en les 2 ans fuer̄ passe, issint q̄ apres Hillary Term passe Anno 31. ne fuit possible q̄ le conveyance serra inrol deins les 2 ans en open Court en le temps del Term. Car les 2 ans passer̄ per estluction de temps devant Easter Term, & pur ceo maintenant apres Hillary Term passe le conveyance fuit void, & p consequence le condition aury. Et sur ceo le case en temps E. 1. tit. Covenant 29. & F.N.B. fuit mis, que coment que le covenant soit que il layser le bops en cy bon plight, &c. al fine del Term, si lesse̅ succide les arbres, il avera covenant maintenant car nest possible, que il layser les abres, &c. al fine del Term, issint q̄ le impossibility del act donera prsent action sur future covenant. Mes fuit resolve p le Court q̄ al temps del tender del anule le dit conveyance (& per cōsequence le condition) fuit en force: & lour reason fuit pur ceo que lestatute ne requite que le enrolment del conveyance que est fact del Court serr̄ deins les 2 ans, mes le monstrans & exhibiting de ceo que est fact del p. ty covient estre deins les 2 ans, car quant al monstrans & exhibiting del conveyance les parols sont (within two years, &c. shall, &c. there in the Term time in open Court exhibit the same) dōques les parols prhein ensuants sont (to be entred and enrolled of record) issint que nul temps est limit quant ceo serra inrol, mes si les parols avoyent estre, and then and there shall be entred and inrolled of record, donques le conveyance covient aver estre inrol deins les 2 ans, mes come les parols sont ceo poit estre inrol apres les 2 ans pass. Et ceo fuit le primer case (dont jeo ay notice) q̄ fuit argue & adjudge sur le dit Act de 33 H. 8. q̄ dōe cōditions de prsons attainted de Treason al Roy. Et en le argument de cest case le case de Thomas Markenfield al mig' an' 19 Eliz. en Leschequer, & divers auters cases des prsons attainted de Treason, queux avoient power de revocation, fuer̄ cite,

Moor 446.

5 Co. 21. a. F. N. B. 145. k. Moor 313, 323. 2 Rolls Rep. 332, 347. Godb. 335.

& ſur conſideration de eux p les Barons, ils reſolvont ut ſupra, & done judgment pur le Roign. Mes le Councel del Francis Engleſield ne fuer ſatisfie ove le judgment, & principalment quant al principal point: Car ſemble a eux que come ceſt caſe eſt, le condition fuit cy enſeparablement annex al perſon de Sir Francis, que ceo ne fuit done al Roign per le dit act de 33 H. 8. Et lour advise fuit a porter brief de Error. Mes al prochein Parliamen, 8. 35 Eliz. especial Act de Parliament fuit fait a eſtablier le forfeiture al Roign.

Tinitatis 34 *ELIZABETHÆ.*

Caſe de *Swans.*

2 Rolls Rep. 30.

IN le Roign & Madam Joan Yong jades le feme de Sir John Yong Chivaler deceaſe, & Thomas Saunger Def. le caſe fuit tiel. Un office fuit trove al W. en le County de Dorſ. 18 Septemb. Anno 32 Eliz. devant Sir Mat. Arundel & autres Commiſſioners del Roign deſouth le grand ſeal, Qd' a villa de Abbotsbury in præd' Comitat' Dorſ. uſq; ad mare per inſulam de Portland in eodem Com' eſt quædam eſtuaria, Anglicè a Were or Fleet, in quam mare fluit & refluit, in qua quidem eſtuaria ſunt 500 cigni, quorum 410. ſunt albi, & 90 ſunt cignetti, & quod omnes præd' cigni & cignetti ſunt in poſſeſſione Johannæ Yong & Thom Saunger, & quod quilibet eorum eſt valoris 2 s. 6 d. quodq; major pars tempore captionis dictæ inquiſitionis minimè fuer ſignat': quel office eſtoit certifie en Leſchequer, un brief fuit direct al Vicont de meſme le County a ſeiſier touts les dits blaunch Swannes nient marked, per force de que le Vicont retorn, que il ad ſeiſie 400. blaunch Swannes, A que puis, 8. Hill' 34 Eliz. les dits

Joan

Joan Yong, & Thomas Saunger plede, Qd' præd' estuaria sive aqua, jacet in parochia de Abbotsbury, in Comitatu Dorſ (& abutt' eo) & q̃ devant l'inquiſition p̃ise, l'Abbot de Abbotsbury fuit seisitus de præd' estuar', & de ripis & solo ejusdem en fee, & q̃ al temps del inquiſition, & de temps dont, &c. fuit, & adhuc est quidam volat' cignorum & cignettorum ferorum, vocat' a game of wild Swans, in estuaria sive aqua illa, & ripis & solo ejusdem nidificant', gign', & frequent', Anglicè haunting, de quo quidem volatu cignorum & cignettorum præd' Abbas & omnes prædecessores sui Abbates Monasterij præd', per totum tempus præd' habuere & gavisi fuerunt, & habere gaudere consueverunt, tot' profic' & increment' omnium & singulor' cignorum & cignettor' ferorum in estuaria præd' nidificant' & frequent': Qui quidem cigni & cignetti per totum tempus præd' fuerunt feræ natura, & infra idem tempus iidem cigni & cignetti seu eorum aliqui aliquo signo non usi fuissent, nec consuevissent signare, nisi q̃d præd' nuper Abbas & prædeceſſ. sui præd', per totum tempus præd' ad eorum libitum quosdam seu aliquos de minoribus cignettis annuat' pullulant', quos ad usum & culinæ & hospital' suæ statuerunt expendend', in hunc modum annuatim signare consueverunt, & usi fuer', videl't, amputare mediam juncturam unius alæ, Anglicè to cut off the pinion of one wing, cujuslibet talis cignetti, ea intent', q̃d cignetti sic amputati minimè valerent avolare: Et puis le dit Abbot surrender les p̃misses al Roy H. 8. q̃ an' 35 de son raign grant al Giles (a) Strangways armig' p̃ ses Letters patents, (inter alia) totam illam liberã piscar' nostram in aqua vocat' the Fleet in Abbotsbury præd', ac omnia mesuagia, aquas, piscat' ac cætera hæreditament' nostr' quæcunq; in Abbotsbury, in dict' Coũ Dorſ. dicto nuper Monasterio, &c. adeo plenè & integrè, &c. & in tam amplis modo & forma, &c. & q̃ le dit Giles mourust, & ceo discend a un Giles Strangways son Coſin & Heir q̃ demise al Def. le dit game de Swans pur un an, &c. & p̃tient quod manus dictæ dom' Reginæ amoveantur. Sur que l'Attorney le Roign demurr en ley. (a) Dav. 57. a.

¶ 1. Fuit resolve, que touts blaunch cignes nient marked, queux sont gain lour natural liberty, & sont natants en un obert & comon ryver, poyent estre seisie al use le Roy p̃ son Prerogative, p̃ ceo q̃ volatilia (quæ sunt feræ natura) alia sunt regalia, alia coia; & illud aquatilium alia sunt regalia, alia coia; come un cigne est volatil royal, & touts ceux le p̃perty de q̃ nest pas con', appent al Roy p̃ son prerogative: & illud (b) Balene & Sturgeons sont pissons royal, & appent al Roy p̃ son p̃rogative. Et la avoit estre auncient officer le Roy appel'. Magistr' deductus cignorum (b) Dav. 56. a. Stamf. Prærog 37. b 38. a. 5 Co. 108 b. Plowd. 315. b.

que

que continue ſeſez a ceſt jour. Mes fuit aury reſolve, q̄ le ſubject poit aver property en blaunch Cignes nient marked, come alcun poit aver cignes nient marked en ſes private ewes: le property de eux apperteiñ a luy, & nemy al Roy, & ſils eſcapont hors de ſes private ewes en un overt & cõmon ryver, il poit eux ameſner, & eux reꝑnder: Et ove ceo accord Bracton Lib. 2. cap. 1. fol. 9. Si autem Animalia fera facta fuerint manſueta, & ex conſuetudine eunt & redeunt, volant & revolant (ut ſunt Cervi, cigni, pavones, & columbæ, & hujuſmodi) eouſq; noſtra intelligantur, quamdiu habuerint animum revertendi. Mes ſils ont gain lour natural liberty, & ſont natants en overt & common rivers, l'officer le Roy poit eux ſeiſier en l'overt & cõmon river pur le Roy, car un blaunch cigne ſans tiel purſuit (come eſt avantdit) ne poit eſtre conus del auter, & quant le property dun Cigne ne poit eſtre conus, ceo eſteant de ſon nature royal volatile, appent al Roy.

Fitz. Barr 6. Br. Eſtray 3. Et en ceſt caſe le liure en 7 H. 6. 27. b. fuit vouch, ou Sir John Tiptoft port actiõ de Treſpas de ſes cignes a tort priſe: Le Def. plede q̄ il eſt ſeĩ del Seignior de S. deins q̄l Seignior touts ceux q̄ eſtate il ad en le dit Mañr ont ewe de temps dont, &c. touts ſtreys eſteant deins le dit Manor, & nous diom⁹, que les dits cignes ſueront eſtrayants al temps en le lieu ou, &c. & no⁹ come Mañr ſeiſomus, & ſeſomus, proclamation en fairs & markets, & tantoſt q̄ nous avom⁹ notice que ſueĩ voſtr̃ eignes, no⁹ a vo⁹ deliveram⁹ a tiel lieu: Le Pl̃ reply, que il fuit ſeĩ del Manor de B. joynant al Mañr de S. & diom⁹, q̄ nous & nous aunceſtrs, & touts ceux, &c. ont ewe uſe de temps dont, &c. pur aver cignes natants p̄ my touts le Mañor de S. & diomus q̄ longe temps devant le priſel, nous mittomus eins, & ſeſomus notice de eux al Def. que ſueĩ nr̃e cignes, & priom⁹ noſtre damages: Et l'opinion de Straunge la fuit ore bien approve p̄ le Court, que le replication fuit bon, car q̄nt le Pl̃ poit loyalment mitter ſes cignes la, eux ne poient eſtre ſtrays, nient pluis que les avers de alcun poient eſtre ſtrays en tiel lieu ou ils doyent aver commõ, pur ceo q̄ ils ſont la ou l'owner ad intereſt de mitter eux, & en quel lieu ils poyent eſtre ſans alcun negligence ou laches en le owner. Hors de q̄l caſe ceux points ſueront obſerve concernant Cignes. ¶ 1. Que chelcun q̄ ad Cignes deins ſon Manor, ceſt aſcavoir, deins ſes private ewes ad property en eux, car le briefe de Treſpas fuit de ſes cignes a tort priſe, s̄, Quare cignos ſuos, &c. ¶ 2. Que un poit preſcribe daver game de cignes deins ſon Manor, tibien come warren ou park. ¶ 3. Que ceſty que ad tiel game de cigns poit preſcriber, que ſes cignes nateĩ deins le

5 Keb. 275.

Manor

ꝯmon̄ dun(a) auꝫ. ¶ 4. Que ſ̄ cigne poit eſtr̄ eſtrap; & iſſint ne (a) 3 Keb. 275.
poit eſte aſcun auꝫ volatile, q̄ jeo ay lie en aſcū liure. En(b) 2 R. 3. (b) Cro. El. 725.
fo. 14. b & 16. a. le Sr Strange & Sir John Charlton poꝛt acꝫ de
Ordis &c 3 p̄ ceo q̄ les Def. avoient pꝛiſe & impoꝛts 40 cignets
des pl̄ & le County de Buck' as dam̄s de 10 l. dan des Def. pleđ,
que l'ewe de Thamiſe curge p̄ my tout le Roialm, & q̄ le dit Coũty
de Buck' eſt adjoinct al Thamiſe, & q̄ le cuſtõe del dit Coũty de
Buck' eſt, & ad eſtr̄ de temps dont, &c. q̄ chelcū cigne (car cignet
en le liure eſt pꝛiſe pur un cigne) q̄ ad ſon courſe en ewe, q̄ ewe
curge al Thamiſe deins m̄ le County, q̄ ſ̄ cigne vie̅t ſ̄ le t̄re de
alcū hõ', & la eyze & ad cignets ſur m̄ la t̄re, q̄ donq̄s ceſty que ad le
pꝛop de le cigne a̅da 2 de les cign', & ceſty a que le t̄re eſt a̅da le
3 cignet, le quel ſerr̄ de meins value q̄ l'auꝛs 2. Et ꝯ fuit adjudg
lon cuſtõe, p̄ ceo que le poſſeſſ. del t̄re ſuffer eux deyꝛer la, ou il Cro. El. 725, 726.
poit a đ̄ eux enchaſ̄ hoꝛs. Et p̄ ceſt judgm̄t aucy appiert que hõe
poit alledge cuſtõe ou p̄ſcribe en cignes ou cignets. Et en m̄ le
cas eſt dit, que en Kity le matr̄ fuit, que le Sr Strang. avoit ct̄ein
cignes, queux fuer̄ cocks, & Sr J. Charlton ct̄ein cignes que fuer̄
hens, & eux avoier̄ cignets enr̄ eux, & pur ceux cignets les owſis
joindꝛõt en ū acc̄, car en tiel caſe, p̄ geſtal cuſtõe del Realm, q̄ eſt
le cõmon ley en tiel caſe, les cignets appr̄t al ambideux les owſis
en cõmõ owelm̄t, ſ̄. al owſi del cock, & al owſi del hen, & les cig-
nets ſ̄ra devide enr̄ eux, & le ley de ceo eſt foundue ſur ū reaſon
en natur̄: car le cock cigñ eſt ū emblem ou repſentac̄ dū affection
& doler baron a ſa feme ouſtr̄ touts auꝛs volatiles, car le cock
cigne deigne luy m̄ a un feme ſoleñt, & a ceſt cauſe nature ad
conferr̄ ſur luy un done ouſtr̄ touts auꝛs, & ceo eſt a moꝛer cy
joyeuſm̄t, que il chanta dulcem̄t q̄nt il moꝛ, ſur que le Poet dit:

Dulcia defecta modulatur carmina lingua,
Cantator, cygnus, funeris ipſe ſui. &c.

& pur ceo ceſt caſe de cigne differt de caſe de kine ou auꝛ bzute
beaſts: Vide 7 H. 4. 9. Et fuit agr̄ee que nul poit a đ̄ Swan mark,
quel Lat' dicit' cigninota, ſ̄nõ q̄ ſoit p̄ gr̄at le Roy, ou de ſes offic̄
a ce̅ authoꝛiſe, ou p̄ p̄ſcrip; & ſ̄ il ad loial ſwan mark, & ad cignes
natūs en obꝛs & cõmõ r̄ps loialm̄t m̄k ove ct̄, eux appent a luy
ratione privileg'. Mes nul a̅da ſwan m̄k ou g̾re de cignes, ſ̄nõ q̄
il ad t̄res & t̄nts de eſtate de franktenem̄t del annuel value de 5 m̄ks,
ouſtr̄ touts charg̃, & pain de foꝛfeit̄ de ces cignes, đ̄t le Roy a̅da
l'un moity, & ceſty que ſeiſe a̅da l'auꝛ moity, & ceo eſt p̄ Leſtat de
22 E. 4. c. 6. Et cey q̄ ad tiel Swan m̄k, poit ceo grant ouſtr̄. Et
de ceo jeo ay vele un notabl' p̄ſident en t̄ps H. 6 & eſt tiel. Not'
ſit oĩb̄ hoĩb⁹ p̄ſ̄ib⁹ & futuris, qd' ego Joh' Steward mil', dedi &

con-

conceſſi Thomæ filio meo primogenito, & hæred' ſuis, cigninotã meam armor' meor', prout in Marg' laterali pingit', quæ mihi hæreditario diſcendebat, poſt mortem J. Steward mil' patris mei: Habẽd' ſibi & hæred' ſuis, unà cum omnibus cignis & cignic', cum dicta nota baculi nodati ſignat', ſub condic', q̃ quilibet feria ſolis duran' vita, à gula Aug', uſq; ad Carniſpr' apud domũ meam de Darford, unum cignic' bene ſignat' mihi aut meis deliberet, q̃d ſi defecerit, tunc volo, qd' hoc p̃ſens chirog' caſſet' penitus, & p̃ nihilo hẽatur. In cujus rei teſtim', ad inſtant' Matildæ uxoris meæ, meum ſigill' ſecret' Chriſti crucifixi p̃ſentibus feci apponi. Hiis teſtibus R. Circo, J. de Conyers, Alano Fabro, & al'. Dat' apud dom' meam manſion' de Darf. in vigilia S Dunſt' Ep', an' regni Regis Hen' poſt conqueſt' Angl' ſexti 14. & en le marg' fuit depict un petit ragged ſtaff. Et en ceſt caſe fuit reſolve, q̃ en aſcun de ceux q̃ ſont feræ natura, hõe ad jus proprietatis, un dñt de ꝑpty, & en aſcun de eux hõe ad jus privilegij, un dñt de ꝓviledge. Et ſont 3 mañ de dñts de ꝑpty, ſ. ꝑperty abſolute, ꝑpty qualefied & ꝑperty poſſeſſory: Property abſolute hõe nad en aſcun q̃ eſt feræ nat', mes en ceux q̃ ſont domitæ nat': Property qualefied & poſſeſſory home poit aũ en eux q̃ ſont feræ nat', & a tiel ꝑpty hõe poit attainer p 2 voies, p induſtry, ou ratione impotentiæ, & loci, p induſtry, cõe p piſcel deux, ou p ſeſans de eux manſueta, i. manui aſſueta, ou domeſtica, i. domui aſſueta: Mes en ceux que ſont feræ nat', & p induſtry ſont fait tãe, hõe nad forſq; qualefied ꝑpty en eux, ſ. cy long cõe remain tãe, car ſils attainont a lour liberty, & nont animum revertendi, le ꝑperty eſt ꝑdue, ratione impotentiæ & loci: Come hõe ad june ſhovelers, ou goſhauks, ou ſemblables, queux ſont feræ natura, & ayront en mõ ẽre, jeo ay poſſeſſory ꝑpty en eux; car ſi un piſt eux q̃nt ils ne poient voler, l'owner del ſoil aũa actiõ de Treſpas. Quare boſc' ſuum fregit, & tres pullos eſper' ſuor', ou ardear' ſuar', pretij tantum, nuper in eod' boſco nidificant', cepit & aſportavit, & ove ceo accord le Regiſter, & F.N.B. 86. K. & 89. K. 10 E. 4. 14. 18 E. 4. 8. 14 H. 8. 1. b. Stamford 25. b. &c. Vide 12 H. 8. 4 & 18 H. 8. 2. Mes q̃nt home ad beaſts ſavages ratione privilegij, come per reaſon de park, garren, &c. il nad aſcun ꝑperty en la dẽr, ou conies, ou pheſants, ou partridges; & pur ceo en action, Quare parcum, warrennam, &c. fregit & intravit, & 3 damas, lepores, cuniculos, phaſianos, perdices, cepit & aſportavit, il ne dirra ſuos, car il nad ꝑpty en eux, mes ils appent a luy ratione privilegij pur ſon game & pleaſure, cy long come ils remainont en le lieu ꝓviledge Car ſi owner del Park morſt, ſon heir aũa eux, & nemy ſes executors ou adminiſtrators, pur ceo que ſans eux le Park que eſt un inheri-

3 Inſt. 98, 109, 110. Cro El. 125. Cro. Car. 388, 545, 554, Co. Lit. 47. a.

Doct. pla. 314

F.N.B. 86. I. M. 87. a. Cro. Car. 388, 554. Co. Lit. 47. a. F.N.B. 87. a. Co. Lit. 8. a. Cro. El. 372. Kelw. 118. a. Owen 20. Goldsb. 129. 2 Roll. 916. Wentw. 81.

inheritance nest my compleat; ne felony poit este cõmit de eux, mes de eux q̃ sont faits tame, in q̃x home per son industry ad aſcun p̃pty, felony poit este commit. Et ove ceo accord le rule del liure en 3 H.6.55.b. 8 E.4.5.b. 22 H.6.59. que est malement report, & 43 E.4.24. vide 22 Ass. 12 H.8.3. 13 Eliz. Dyer 306. 38 E.3.10. Vide 2 E.2.tit. Distres 2 E.2. Avowry 182. Mes hõe avera p̃pty en aſcun choſes q̃ sont de cy base nature que nul felony poit este commit de eux, & nul home p̃ra pur eux vie ou member; come de bloodhound & un maſtiffe, moloſſus, 12 H.8.3. vide 18 H.8.2. Mes cesty q̃ emblée les eggs de cignes hors del nest, ſera imp̃iſon per un an & jour, & fine al volunt le Roy, l'un moity al Roy, & l'aut al owner de terr̃ ou les eggs fuer̃ iſſint p̃ſe, & ceo est p̃ Leſtatute de 11 H.7.cap.17. Et d'auncient temps avoit dit, q̃ cesty que emblée cigne en overt & cõmon riṽ. loialm̃t marked, meſme le cigne (ſi poit este) ou aut cigne, ſer̃ penõ en un meaſon p̃ le beak, & cesty q̃ emblea luy ſer̃, en recompẽce de ceo, chaſe a doner al owner tant de frumẽt q̃ poit coverer tout le cigne, per mitter & doer del frument ſur teſte del cigne, tanq̃ le teſte del cigne ſoit cover ove le frument. Et fuit reſolve que en le p̃incipal caſe, le p̃ſcrip̃ fuit inſufficient, car l'effect del dit p̃ſcription est d'aver touts wild Cignes q̃ sont feræ natura, & nient mark, nidificant', gignent & frequentant', deins le dit créek. Et tiel p̃ſcrip̃ pur un warren ſerra inſufficient, ſ. d'aver touts pheſants & partridges nidificants, gignents, & frequentants deins ſon Maner. Mes doit dire d'aver tiel warren de eux deins ſon Maner, car cõſtat q̃ ils sont nidificants, gignents & frequentants en le Maner, il ne poit aver eux jure privilegij, mes cy lõg come ils sont deins le lieu. Mes fuit reſolve, q̃ ſi les Def. avoient alledge, q̃ deins le dit créek la avoit este de tẽps dont, &c. un gãe de wild Swans nient marked, nidificants & gignents, & dons d'aver p̃ſcribe q̃ tiel Abbot, & touts les p̃deceſſors, &c. avoient uſe de touts tẽps a aũ & p̃der a lour oeps, aſcuns de le dit game de wild Swans, & lour cignets, deins le dit créek, ceo uſt este bon, car cõm̃t q̃ cignets sont royal volatiles, uncore en tiel maner hõe poit p̃ſcribe en eux, car ceo poit aver loyal cõmencem̃t p̃ graunt le Roy, car en Rot' Par' an' 30 E.3. part 2. num' 20. le Roy graunt a C.W. touts ſere cignes unmarked enr̃ Oxford & Londres pur 7 ans: In eodem Rot' an' 16 R.2. part 1. num' 39. autiel graunt de ſere cignes unmarked en le County de Cambr' al B. Bereford Ch'er: In eod' Rot' an' 1 H.4. part 6. numero 14. un graunt fait a John Fenn, a ſurveyer & cuſtodier touts ſere cignes unmarked, ita q̃d de proficuo reſpondeat ad Scaccarium, per

3 Inſt. 98, 99, 109, 110.

3 Inſt. 109.

Stamf. Cor. 25. b.

Wing. Max. 17.

per ẽux appiert, q̃ le Roy poit graunter fere cignes unmarked, & per conſequens home poit preſcriber en eux deins certein lieu, pur ceo que ceo poit aver loial commencement. Et home poit preſcriber ẽaver royal piſſons deins ſon Manoꝛ, come eſt tenus en 39 E. 3. 35. pur le reaſon avantdit, & uncoꝛe ſans p̃ſcipt̃ ils appẽt al Roy p̃ ſon prerogative.

Mich. 39 & 40 *ELIZABETHÆ.*

In l'Eſchequer.

Sir *Thomas Cecil's* Caſe.

SIr Thomas Cécil eſteant ſeiſie del Manoꝛ de Strickſton en le County de North' enk̃ en communication ove un Foſter a exchaunger divers parcels de ceo ove luy, pur certain fres, q̃ le dit Foſter ad en meſme le ville, & devant aſcun exchaung' perfected, Sir Thomas convey le dit Manoꝛ & le dit terre del dit Foſter, p̃ ſpecial noſme del dit Foſter, p̃ fait endent & inroll, al Roign Elizabeth ſes heirs & ſucceſſoꝛs, & covenãt ove le Roign, que il fuit ſeiſie tibien del dit Manoꝛ, come des dits terres, javes Foſters ẽun bon eſtate en fée ſimple, &c. & le dit Sir Thomas fuit lye al Roign en un obligation en 10000 Marks a perfoꝛmer le dit covenant enk̃ ſuters. Et le dit Sir Thomas avoit, devant ceſt temps, exhibit un Bill in Anglois in l'Eſchequer Chamber, compernant le matter avantdit, & q̃ les dits fres, parcel del dit Manoꝛ, intende ẽeſte done en exchaunge al Foſter, fuek̃ de greinder value q̃ le dit terre del dit Foſter, iſſint q̃ le Roign ne fuit deceive & le value, queux fres parcel del Manoꝛ paſſont al Roy p̃ le conveyance del Manoꝛ, & nient meins le covenant & obligation del dit Sir Tho. quant a ceo fuek̃ enfreint, & foꝛfeit p̃ le rigoꝛ del ley.

Mes

Mes le dit Sir Thomas en son Bill relia sur Lestatute de 33 H.8.c.39. p q̃ est purview, That if any person, of whom any such debt or duty is, or at any time hereafter shall be demanded, alledge, plead, declare or shew in any of the said Courts, good, perfect and sufficient cause and matter in law, reason or good conscience, in barr of discharge of the said debt or duty, or why such person or persons ought not to be charged or chargable, to or with the same, and the same cause or matter sufficiently prove in such one of the said Courts, as he or they shall be impleaded, sued, vexed or troubled for the same; That then the said Courts, and every of them, shall have full power and authority, to accept, judge and allow the same proof, and wholly and clearly to acquit and discharge all and every person and persons, that shall be so pleaded, vexed, sued or troubled for the same; any thing in this present Act before-mentioned to the contrary notwithstanding &c. Et q̃ pces suit sue vers luy sur le dit obligation hors del Court del Eschēqr. Sur q̃l Act de Parliamt, & le matr avantdit (esteant come il suppose bon, pfect & sufficient cause & matr en reason & bon conscience deins le dit Act, a discharger luy del dit Obligation) le dit Sir Tho' p son dit bill pria destre relieve, & sur ceo il avoit Cōmission a eraier testmoigns a pver le matr de son bill destre voier, q̃r fuer retorn & publy; Et sur le oyer del cause en Court en l'Eschequer Chamber, appiert p le testimony de dits testmoigns, q̃ le pr ad fait direct proof de touts les parts de son bill. Et ore en cest Term̃ an' 39 & 40 Eliz. diūs q̃stions fuer mave touchant cest matr. ¶ 1. Et le pincipal suit, Si le branch del Act extend a ascun del mention en le dit Act, pur quoy le Roy ad remedy p le cōmon ley, ou en tiels dets, & tiels cases solem̃r, pur quoy le dit Act done remedy al Roy q̃ il navoit devāt. ¶ 2. Si le Court poit fair discharge p decre sur cest bill en Anglois deins l'intention del Act. Et q̃r al pmer, est ascavoir, q̃ divers branches del Act sont destr̃ conslder. 1. L'Act fait touts obligations al Roy en nature dun Statute staple. 2. Auter branch done la suit al Roy, comt q̃ l'obligat ad estre fait al auter al use del Roy. 3. Que le Roy sur suit sur chescun obligat fait, ou en aps dee fait, recovra damages & costs. 4. Lestatute done remedy al Roy pur recovr de son det ou duty, &c. p Capias, Extend' fac', Subpœna, Attachm̃t, & Proclamation de allegiance (si besoigne soit) ou autrem̃t come a ascun des Courts serr̃ p lour discretions pense expedit pur le spedy recovr des dets le Roy. 5. Est un claule, q̃ le Roy ẽst pferr en son execut̃, devāt cōmon plons. 6. Le heir q̃ claim p done son auncestor ẽra lie a paier le det le Roy (que devāt ou aps le dōe)

(a) Hard. 27, 304, 368, 442. 4 Init. 118, 119. 3 Co. 12. b. Apres 21. a. b. Lane 51. O. Bendl. 65, 66, 67. Lit. Rep. 87, 88.

4 Inst. 118, 119.

per judgment, recognizance, obligation, ou auter ſpecialty, & lia le terre aury al det le Roy vers l'iſſue en tail; Donques vient le dit proviſo dont le queſtion ſurde, que commence, Provided always, and be it enacted, That if any perſon &c. *ut ſupra.* Et fuit object, que ceo extendra ſolemẽt en tiels caſes en queux remedy eſt done al Roy p ceſt ſtatute; Come ou un bond fuit fait al uſe del Roy, ou en charging del iſſue en tail, ou en charging l'heir, que claim per done devant le det accrue, &c. la pur ceo q̃ l'eſtatute done al Roy remedy que il navoit devant, ceſt brauncb done le party iſſint charge per ceſt Act, plea a luy diſcharger, ou per matter de barr en ley, ou en bon conſcience. Et ceo fuit ſoytment enforce p le concluſion de ceſt proviſo: Car le concluſion eſt (come devant appiert)) any thing in this Act before-mentioned to the contrary notwithſtanding; iſſint que le ſenſe fuit, q̃ le party poit prender aſcun matter en ley ou bon conſcience, nient obſtant aſcũ choſe contein deins ceſt Act, que eſt tant a dire, q̃ ceſt Act ne ſra impedimẽt a ceo. Mes en noſtre caſe, le Roy ad remedy per le common ley, & ideo ceſt proviſo ne aidera luy. Quant a ceo fuit reſide, & reſolve p le Court, que le dit Sir Tho' Cecill ſur le matter avantdit fuit deſte relieve p le aid de ceſt proviſo, car le dit Act de 33 H. 8. ad done benefit & advãtage al Roy: 1. En leaſant cheſcun bond fait al Roy en nature dun Statute ſtaple, 2. En donant remedy al Roy meſme pur obligations faits al auters a ſon oeps. 3. A recover coſts & damages. 4. En ſuer execution pur tout ſes debts. 5. En charging l'iſſue en tail, & l'heir que ad le fee de done ſon auncеſtor: Et pur ceo fuit l'intendimẽt del Act a gratifier le ſubject, que ſon novel proviſion fuit fait pur le levier del det le Roy en pluis ſpeedy & beneficial manner, que le Roy navoit devant, le ſubject aury avera aſcun novel benefit que il navoit advant, & ceo fuit a diſcharger luy meſme per matter alledge deſte diſcharge en bon conſcience. Aury ceſt proviſo ne done benefit ſoleñt a ceſty que ad matter en bon conſcience, mes aury a ceſty que ad good, perfect and ſufficient cauſe and matter in Law, Reaſon, (& donques vient) good Conſcience; & ſans queſtion le primer parols, ceſt aſcavoir, cauſe and matter in Law, extendera a touts les dets le Roy, & proces ſur ceo cibien al common ley, come ſur ceſt Act: Et le concluſion del dit brauncb ne fait encounter ceo, car le ſence de ceo fuit, que il pledera matter en ley ou bon conſcience, & q̃ riens contein en le dit Act ne ſerra impedimẽt a ceo. Et iſſint fuit tenus en ſemble caſe ſur autiels pois en le ſecond ſavant de 27 H. 8. cap. 10. de Uſes, en Chenie's Caſe, ou

3 Co. 12. b.
8 Co. 171. a.
Aprés 21. b.
Hard. 304.

ou le proviſo ſave le droit, &c. des, &c. ſicome l'Act nuſt eſte fait: Et ſi le caſe fuit, q̄ le leſſor infeoff le leſſee al uſe des auters, en q̄ caſe ſi Leſſee ne unq̄s uſt eſte fait, le term uſt eſte merge al cōmē ley: Mes Trin. 27 Eliz fuit reſolve, q̄ le term fuit ſave, & meſme l'expoſition fait des pois come devant. Autre cour notable preſidents fueſ cite, q̄r fuer reſolve en l'Eſchequer p les Barons del Eſchequer, ſur conference ewe ove les 2 Chief Juſtices, l'un en le caſe de Sir William Herbert in Trin. 37 Eliz. que fuit relieve ſur le dit brauncb del dit Act pur matter en equity, pur ceo q̄ in Scire facias vers luy come heir a Math. Herbert ſon pier, ſur recognizance conuſt al Roy Ed. 6. p le dit Mathew, le Viſ̄ retorn Scire feci, & ſur ſon default judgm̄t fuit done, come poies veier en Mathew Herbert's Caſe en le 3 Part de mes Reports. Et pur ceo q̄ en verity il ne unq̄s fuit ſummon. & ad bon matter, ſil avoit notice, de ceo de pleder en diſcharge del dit Recognizance, pur ceo q̄ il ad nul fee p diſcent de ſon pier, ne alcūs terr̄ de luy aps le recognizance conus; tout q̄ il monſtr̄ en certain en un bill en Anglois en l'Eſchēqr Chamber: Sur q̄, ſur conference ewe p Sir Roger Manwood & les auters Barons, ove les 2 Chief Juſtices, p decree il fuit diſcharge del dit Recognizance, &c. Auter caſe fuit cite: Thomas Duke de Norff. fuit attaint p Parliam̄t An° 38 H. 8. & le Roy Ed. 6. vend a Sir Ed. Rous divers arbres de meriſme creſceants ſur les poſſeſſions del dit Duke en Suff. & Sir Edw. fuit lye en un Obligation al Roy Ed. 6. pur payment de certein deniers, a certein jour pur les dits arbres, & devant le jour de payment, & devant le dit Sir Ed. ſuccide aſcun des dits arbres, Ed. 6. moruſt, & al Parliament tenus Anno 1 Reginæ Mariæ fuit declare p Parliam̄t, que le dit attainder del dit Duke fuit void, per q̄ le dit Sir Ed ne unques puit enjoyer les dits arbres ſolonqs ſon bargain. Et en Scire facias en l'Eſchequer ſur le dit obligation vers l'heir & terre tenant de Sir Ed. Anno 28 Eliz. ils apperont, & pledont tout le dit matter en equity, en barr & diſcharge del dit Obligac̄, en un Latin plea en l'eſchequer. Et ſur bon conſideration del ſtatute de 33 H. 8. per les Barons, & del dit plea, al barraim̄t (aps que ceo uſt longement depend) fuit reſolve per les Barons, que les Def. fuer deſte relieve deins le dit Act, & q̄ les Defendants bien poyent pleder ceo en barr. Et ſur ceo Popham Attorney General, veyant l'opinion del Court, ulterius proſequi non vult. Queux ambideux preſidents jeo monſtr̄ a les Juſtices, & accordant fuit reſolve per touts les Juſtices d̄ Engleterre (q̄ fuer aſſembles pur doner lour opinion en le dit caſe) que Sir Thomas Cecill fuit deſte relieve, ſur le dit matter en

3 Co. 15. b.

3 Co. 15. b.

equity, deins le purview del dit brauncb de 33 H.8. Et ſecondſnt, que le Court del Eſchequer Chamber poit bien ſur le dit bill en Anglois (coment q̄ le ſuit fuit p̄ pces al common ley en le Court del Eſchequer devant les Barons) fair decrée en le caſe, car a ceſt purpoſe ne ſont forſigz un Court. Donques fuit move, ſi le prochein Paiſo prochein enſuant apres le brauncb concernant le equal charging del terr̄ liable al det le Roy en les mains de cheſcū owner & poſſeſſor, & q̄ aſcun de eur ne ſerra charge ſolem̄nt, mes touts entierm̄nt, ſi ceo extend a touts les dets le Roy, & a touts executions pur ledier de eux cibñ al cōmon ley, come ſur le dit Act. Et fuit reſolve p̄ eur, que le dit brauncb extend a touts executions pur dets le Roy, cibien al common ley, come ſur le dit Act, & que touts ſerr̄ owelment extend p̄ force de ceſt brauncb ſolongz le purview de ceſt Act. Fuit aury reſolve, q̄ coſtr q̄ l'obligation fuit fait pur p̄formance de covenants, uncore aps que ceo fuit enfreint (come fuit en le caſe al barr al temps del enſealing & delivery de ceo) ceo fuit un det al Roy p̄ Obligation deins l'Act.

Hard. 368, 442.

Trin.

Trin. 41 *ELIZABETHÆ* Reginæ;

In Scaccario.

Le Seignior *Anderſon*'s Caſe.

Inter le Sr̃ Anderſon chief Juſtice del Court de Cõmon Pleas, & Sibthorpe del Melieu Temple, un queſtion fuit move ſur le bzaunch del dit Act de 33 H. 8. cap 39. ceſtaſcavoir, That all Manors, Lands, &c. which now be, or that hereafter ſhall come or be, in or to the poſſeſſion or ſeiſin of any perſon, to whom the ſame Manors, Lands, &c. have heretofore or hereafter ſhall diſcend, &c. in fee ſimple or fee tail, &c. by or after the deceaſe of any of his or their anceſtor or anceſtors as heir, or by gift of his anceſtor, whoſe heir he is, which ſaid anceſtor or anceſtors was, is or ſhall be indebted to the King or to any other perſon to his uſe, by judgment, recognizance, obligation or other ſpecialty; That then, in every ſuch caſe, the ſame Manors, Lands, &c. ſhall be and ſtand by authority of this Act from henceforth charged and chargable, to and for the payment of the ſame debt. Si teñt en tail del Manoz de D. ſoit lye en un Recognizance a J. S. q̃l Recognizance aps deveign̄ al Roign per l'attainder de J. S. de haut Treaſon, & puis teñt en tail mozuſt, & l'iſſue en tail alien la terr̄ bona fide, ſi le Roign poit extender ſe Manoz de D. en les mains del alienée. Et en ceſt caſe 4 points fuer̄ reſolve per les Barõs, ſur conferẽce ewe ove Popham chief Juſtice & divers auters Juſtices. ¶ 1. Fuit reſolve, que devant le dit Stat̄ de 33 H. 8. ſi tenant en tail de terre deveigne en det al Roy per judgment, Recognizance, obligation, ou auterment, & mozuſt, le Roy ne (a) extendza le terre ẽ le ſeiſin del iſſue en tail: Car le Roy eſt (b) lie p Leſtat̄ de donis conditionalibus, come eſt adjudge en Plowd. Com. en le Seignioz Barkley's Caſe 22. en le pzincipal caſe; & ove ceo accozd, q̃n̄ al point en q̃ſtion, reſolution del Court en l'Eſchequer, & del Court de Surveyoz̃ en le caſe de Browne pier de Juſtice Browne, cõe

Lane 51.

(a) F.N.B. 217. C.
(b) 1 Co. 44. b. 48. a. 5 Co. 14. b. 11 Co. 72. a. Apres 32. a. Plowd. 243. b. 244. a. b. 248 b. 251. b. 252. a. 1 Rol. R. 153.

eſt repoꝛt en Plow. Com. 249. b. Iſſint un point bien reſolve, en q̄ fuit variety des opinions en nr̄e liures. Vide 39 Aſſ. pl. 18. 47 E. 3. 8. Regiſtr' 143 & 144. Fitz. N. B. 217. a & b. ¶ 2. Fuit reſolve, Que ſi tenāt en tail deveigne endet al Roign per receipt des deniers del Roign, ou auterm̄t, ſinō que ſoit per judgm̄t recognizance, obligatiō, ou auter ſpecialty & mozuſt, la terre en le ſeiſin de l'iſſue en tail, p force del dit Act de 33 H. 8. ne ſera extēd pur tiel det le Roign, car Leſtatute de 33 H. 8. extend ſolement al dits 4 caſes; & touts auters dets remain al common ley. ¶ 3. Fuit reſolve, Que ſi tēt en tail deveigne endebt al al Roign p un des 4 voies mention en le dit Act, & mozuſt, & devāt aſcū pces, ou extēt, l'iſſue en tail bona fide alien la t̄re en tail, q̄ oꝛe ceſt t̄re ne ſerr̄ extendū p force del dit Act de 33 H. 8. car cō appiert p les pols del dit branch, ceo fait la t̄re en le poſſeſſion ou ſeiſin del h̄e en tail ſolem̄t liable as l'iſſue en tail, & nemy l'alienée: Car l'effect del purview, quant a ceſt purpoſe eſt, That all Lands which ſhall be in the poſſeſſion or ſeiſin of any perſon, to whom the ſame ſhall diſcend in fee tail as heir, whoſe anceſtor was indebted to the King, &c. That then, in every ſuch caſe, the Land ſhall be charged with the Kings debt; Iſſint q̄ p l'expreſſe purview del Act, le t̄re ſerra ſolem̄t extend, cy long cō ceo eſt en le poſſeſſ. ou ſeiſin del h̄e en tail; car l'Act dit, That in every ſuch caſe the land ſhall be charged & entāt q̄ le t̄re as l'iſſue en tail, ne fuit extendable devant le dit Act, le Roy ad benefit d'extender ceo en le poſſeſſion del heir en tail, q̄ il ne puit devāt, mes le Roy ne poit extender en les mains del alienée, car Leſtatute n'extend a ceo; & le ſeaſors del Act ont reaſon a favour le purchaſor, farmor, &c. del h̄e en tail, pluis q̄ l'heir meſme, car ils ſont ſtrangers al dets del t̄nt en tail, & ils vient al t̄re bona fide, & ſur bō cōſideration. Aury, la eſt auc̄ clauſe p̄hein enſuant al dit br̄ach, l'effect de q̄ eſt, And that our Sovereign Lord, his heirs or ſucceſſors, ſhall not be barred, delayed, &c. to demand and receive their juſt, &c. debts againſt any of his Subjects, as heir or heirs, &c. if any ſuch perſon or perſons ſhall ſay or alledge, that they have no lands, &c. but only entailed or given to them by any of their anceſtors to whom they be heirs: Iſſint q̄ p ceſt clauſe aury l'intent des ſeaſors del Act appiert, q̄ l'heir en tail ſerra ſolement charge ove le det le Roy. Mes t̄res en fée ſimple fueront extendable al common ley, en quecunq̄ mains que eux deviendr̄ot, & pur ceo quant a our Leſtatute ne fuit forq̄s declarativum antiqui juris; mes quant al eſtates en tail, ceo fuit introductivum novi juris vers l'iſſue en tail, & ceo, en le caſe al barr, fait le diverſity des dits caſes, coment

O. Bendl. 66.

3 Co. 14. b.

Devant 19. b.

Plowd. 440. a.
3 Co. 12. b.

Hardr. 27.

coment que ambideux ſont conjoine en un meſme ſentence. Et Popham Chief Juſtice dit, que iſſint ad eſtre reſolve en Letteſquer, devant ceſt temps, en le caſe de Serjeant Nichols, plet de Serjeant que ore eſt, que la le terre en les mains del purchaſer del iſſue en tail, ne ſerr extend per le dit Act de 33 H. 8. pur le det que le plet del iſſue en tail devoit al Roy (per un des 4 dops mention en lacts) fuit diſcharge per opinion del Court del Exchequer. Et 4. fuit reſolve, q̄ ineant q̄ le dit det, en le caſe al bark, fuit originalm̄t due al ſubject, q̄ tiel det nemt pas deins le dit Act de 33 H.8. a charge le tre en le poſſeſſiō ou ſeiſin del heir en tail: car le dit act, quant a charger terres intailed pur iſſue, extend ſolem̄t aux dets originalment, & immediatm̄t due al Roy, per judgm̄t, Recogniſance, Obligation, ou auter ſpecialty, car les pols ſont (indebted to the King, † or any other to his uſe by judgment, &c.) q̄ eſt intendū deſtre * immediate det, & nemy aux dets q̄ur fuer due aux ſubjects, & apptain ou accrue al Roy p reaſon de attaind, utlagary, forfeit, done del pty, ou per aſcū auter collateral voy ou mean, pur q̄ur le ſtatute de 33 H.8. ad un clauſe, petit devant le dit branch, pur le brief & general manner & forme de pleading, en tiels caſes, (pur recovery de eux en les Courts mention en le dit act) del pt le Roy, &c. That the party ſuch a year and day did give the ſame debt to the King, or was attainted, outlawed, or other offence, forfeiture, deed, act or thing committed or done, by reaſon whereof the ſaid debts did accrue and ought to remain, come, and be to the King. Iſſint q̄ le ſeval manns del pennings de ceux a branches manifeſt lentētiō des reaſons del act, a preferr immediate de ts d e al Roy p judgm̄t, &c. devant dets del ſubjects, q̄ur accrue al Roy p aſſignm̄t, attaindre, utlagar, &c. & le reaſon fuit, pur ceo q̄ dets immediatm̄t al Roy p judgm̄t, recognizance, obligation, ou auter ſpecialty, ſont en lour nature pluis haut, & poient eſtre mieux conꝰ, & ſur ſearch trove, q̄ dets due aux ſubjects. Aury quant J. N. eſt indet al J.S. p judgm̄t, Recognizance, Obligation, ou auter ſpecialty, & puis J.S. eſt utlage, &c. p q̄ le det deveign al Roy per utlagary, &c. en ceſt caſe ne poit eſtre ꝑpm̄t dit, q̄ J.N. eſt indet al Roy p judgm̄t, Recognizance, Obligation, ou aut̄ ſpecialty: car p ceux il fuit indet a J.S. & J.S. perſon utlagat̄ (q̄ eſt le title le Roy) ad forfeit eux al Roy; iſſint que p force del judgment, &c. & utlagat̄ le det appertain al Roy. Et les parols del act ſont (indebted to the King, or any other to his uſe by judgment, &c.) iſſint q̄ le det. ou covient eſtre immediatem̄t al Roy meſm̄, ou, ſi ſoit a aſcū aut̄ q̄ al Roy, ceo covient eſtre originalm̄t al oeps le Roy:

† 1 And. 129, 130.

* Lit. Rep. 87, 88.

Et

Et ceo neſt my quant le det eſt originalment due al ſubject a ſon oeps demeſne, & puis forfeit al Roy per act ſubſequent. Et iſſint fuit reſolve, que pur tiel det le Roign ne extendra ou vers alienée del heir in tail, ou vers le heir en tail meſme: Car tiels dets ne ſont deins le dit act de 33 H. 8. quant a charger le heir en tail, & iſſint remain al common ley come dets immediatment due al Roy, que ne ſont due ne per judgment, recognizance, obligation, ne auter ſpecialty, come ad eſtre dit devant.

Trin'

Tinitatis 42 *ELIZABETHÆ.*

In Communi Banco.

But's Case.

IN Repl' int' Fish & But, le case en effect fuit. Un seisie de Black acre en fée, & auxi possesse de White acre pur ans, p son fait grant rent hors de ambideux a un A. a aver & p̄ceiv̄ a luy pur Term de son vie, ove clause de distres en ambideux, & pur rent arere A. distrein & avow en White acre, & si le distres fuit bien pris ou nemy, fuit le question. Et fuit agrée per totam Curiam, que le distres fuit bien pris. Et en cest case ceux points fuer̄ resolve. ¶ 1. Que si lessée pur ans dun carve de tre, grant a un auter un rent hors del dit carve pur le vie del grauntée, que ceo est bon charge durant le Term, si le grauntée vive cy longement: car le graunt serra pris pluis fort vers le grauntor, & ne serra void quant per ascun construction ceo poit estre fait bon (Vide Plow. Comment' in Welchdens Case) & en tiel case le grauntée nad que chattel. Jissint, si le lessée pur ans graunt la carve del terre al auter pur Term de son vie, il ad lentier Term, sil vivet̄ cy longement, cibien come en le case del devise. ¶ 2. Fuit resolve, que quant rent est graunt hors de terre en fée, & hors dun Term pur ans, a aver & percepver al grauntée pur Term de son vie, que ceo, come estate de franktenement solonque le purport del fait, ne poit issuer hors del Term pur ans, mes hors del terre que le grauntor ad en fée simple tantsolement; pur ceo que le franktenement del rent poit issuer hors de ceo, & nemy hors del chattel. Et un entire rent ne poit estre franktenement hors de Black acre, & chattel hors de White acre; & a fait deux Rents quant iun solement est graunt per un al auter serra en cest case injurious, & le pact & mutual agre-

Cr. El. 183.

V. apres 25. 2.

Co Lit. 147. b.
Cr. Jac. 390.
1 Rolls Rep. 330.
Cr. El. 607, 612.

ment

ment des parties, ne poient charger tiel choſe ove rent, que neſt pas (a) chargeable per la ley, come hoꝛs de bundꝛed ou advow-ſon, 30 lib. Aſſiſarum pl. 5. hoꝛs dun fair, 14 E. 3. tit. Scire fac' 122. le Countée de Kents Caſe, ne rent poit eſtre graunt ou reſerve dalcun eſtate de franktenement hoꝛs dalcun auter hereditament que neſt pas mainourable, ou en poſſeſſion, reverſion, ou per poſſibility, mes eſt hæreditamentum incorporeum; car pacta privata non derogant jure Cõmuni: & en Aſſiſe ils ne poiẽt eſtre miſe en vieu, ne alcun diſtres poit eſtre pꝛiſe en eur. Mes, en le caſe al barr', White acre eſt hæreditamentum corporeum & mainoꝛable, mes pur le exility & incapacity del intereſt, q̃ le grantoꝛ ad en ceo, ceſt rent de franktenement ne poit iſſuer hoꝛs de ceo, mes iſſera ſolement hoꝛs del terre en fée-ſimple. Et en le caſe al barre, en aſſiſe poꝛt de ceſt rent, le terre en fée ſerra ſolement miſe en vieu, & ſi le grauntée accept leaſe on grant de White acre, ceo ne ſuſpendꝛa ſon rent. ℣ 3. Fuit reſolve, que White acre terra, durant le Term, ſubject al diſtres del grauntée pur le rent, durant les ans, coment que le rent ne iſſuer hoꝛs de ceo, come en 41 E. 3. 14. quant terre eſt charge ove rent en fée, biens (b) & chateux poient eſtre oblige al diſtres. Et fuit dit, que, intant q̃ White acre eſt ſolement charge ove diſtres, ſi le grauntée pꝛiſt leaſe dalcun part de ceo, ceo neſt alcun ſuſpenſion del diſtres, mes que il poit diſtrainer en le reſidue; car ceo neſt iſſuant hoꝛs del terre, mes deſtre pꝛiſe ſur le terre: come ſi jeo ay garren en auter terre, & pꝛiſe leaſe del parcel del terre, coment que le terr̃ ſoit charge ove le garren, uncore, intant q̃ ceo ne iſſuit hoꝛs del terr̃, ceo neſt alcun ſuſpenſion. Vide (c) 35 H. 6. 56. a. 14 H. 4. 6. &c. car home poit aver garren en ſon terre demeſne: iſſint il poit en mults caſes diſtrein en ſon poſſeſſion demeſne, come en 31 E. 1. tit. Diſtres 64. & 7 H. 6. 3. per Curiam, un tenant en cotion diſtreinera les beaſts del auter en la terre que ils ount en common, & 26 H. 8. fol. 5. ſi poit pꝛeſcribe a diſtreiner en ſon terre demeſne, mes nemy aver rent hoꝛs de ſon terre demeſne. (d) Si home per fait grant rent de 40 s. a un auter hoꝛs de ſon Manoꝛ de Dale, a aver & perceiver a luy & ſes heirs, & graunt ouſter per meſme le fait, que ſi le rent ſoit arere, que le grauntée diſtrainera en le Manoꝛ de Sale (ſoit le Manoꝛ de S. en meſme le County ou en auter, & ſoit ceo grant per un fait ou divers faits) le rent eſt ſolement iſſuant hoꝛs del Manoꝛ de D. & neſt que (e) pain, que il diſtreinera en le Manoꝛ de S. mes ambideux les Manoꝛs ſont charge, lun ove le rent, & lauter ove diſtres pur le rent, lun iſſuant hoꝛs del terre, & lauter deſtre pꝛiſe ſur le terre.

Et

(a) Co. Lit. 47. a. 5 Co. 3. a. 4. a. Palm. 105, Co Lit. 44. b. 142. a 2 Rolls 446. Cr. Jac. 111, 112. Moor 163, 168. 2 Sand. 303, 304. Raymond. 194. Cr. El. 690. Br. Rents 11. Br. Tenure 26. Br. Aſſiſe 309.

(b) Co. Lit. 147. a

(c) 11 Co. 13. b. Dyer 30. pl. 209. Dav. 5. b. Poph. 169

(d) Co. Lit. 147. a. 2 Rolls 426.

(e) Co. Lit. 147. a. 2 Rolls 425.

Et si jeo grant a vous, que vous & vostr̄ heirs (a) distreina pur un rent de 40 s. deins mon Manor de S. ceo per construction en ley amountera a un graunt dun rent hors de mon Manor de S. car si ceo ne amountera a un graunt dun rent, le graunt serra de petit force ou effect, si le grauntée navera forsq; un nude distres, & nul rent en luy: car donques il ne unques averoit Assize de ceo, &c. & ceo est le reason, que est savent foits rule & resolve, que ceo amount a un (b) graunt dun rent, p̄ construct̄ de ley, ut res magis valeat, 5 E. 3. 12. 3 Lib. Ass. pl. 7. 14 Ass. pl. 14. 16 E 3. tit. Graunts 64. 18 E. 3. 52. 26 Ass. 38. 30 Ass. 12. 46 E. 3. 18, 32. 8 H. 4. 19. 9 H. 6. 9. a. 22 H. 6. 11. Lit. 48. b. Et en tiel case le grauntée navera brief de Annuity. Mes quant un graunt rent hors del Manor de D. & graunt ouster, que si le rent soit arere, le grauntée distreinera pur mesme le rent en le Manor de S. ceo est forsque penalty (c) en le Manor de S. pur 3 causes. 1. Le ley (d) ne besoign a fair construction, que ceo amountera a un graunt dun rent, car icy un rent est expressement graunt destre issuant hors del Manor de D. & les parties avolent expressement limit hors de quel terre le rent issuera, & en q̄ le distres serra pris, & le ley ne serra exposition encounter lexpresse pois & entention des parties, quant ceo poit estoier ove le rule del ley; Quoties (e) in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est. 2. (f) Si en cest case ceo amountera a un graunt de Rent hors del Manor de S. donqs le grauntor serra deux foits charge; car si le grauntée poyt brief Dannuity, ceo extendra solement al Manor de D. car sur le grant de distress en le Manor de S. nul brief Dannuity gist, pur ceo q̄ le Manor de S. est solement charge, & nemy le person del grantal, quant a ceo; & a cest cause le poyter del brief Dannuity ne poit discharge le Manor de S. dascun rent: & issint le ley, pre construction encounter les parols & lentention des parties, serra injury al grauntor a charger luy 2 foits. 3. (g) Si en tiel case le Manor de S. en que le distress est solement limit, serra en auter County, donques ad estre sovent foits adjudge, que le rent ne issuet hors de ceo, mes le distress serroit come un mean & remedy a coarcter le tenant del terr̄ a paier le rent. Et fuit dit, que ne fuit ascun diversity en reason; que le ley en construction serra le rent destre issuant hors de ceo, quant il gist en mesme le County, & nemy quant il gist en several Counties; car les parols en ambideux cases sont tout un, & nest ascun reason a dire, que il failera de

(a) Co. Lit. 147. a. 146. a. 2 Rol. 424. 9 Hen. 6. 9. a. Dyer 22. pl. 141. 41 Ass. pl. 3. Moor 592. Plow. 139. a.

(b) Lit. Sect. 221.

(c) 2 Rolls 425. Co. Lit. 147. a.

(d) Co Lit. 147. a.

(e) Wing. Max 24. Co. Lit. 147. a. 2 Sand. 167.

(f) Co. Lit. 147.

(g) Co. Lit. 147. a.

reco-

Devant 3.a.b. recovery p aſſiſe. Vide ſupra en Bulwers Caſe; & les liures en 11 Aſſ pl. 10 & 1 E. 3. 21. & auters liures ne dionᵗ, q̃ le rent iſſuiſt en tiel caſe hors de ambideux, mes q̃ le terre en q̃ le diſtres ſerra pᵗiſe eſt charge, & ceo eſt voier, car eſt charge al diſtres: Et intant q̃ ceo fuit charge al diſtreſs, lour opinion fuit, q̃ les tenãts de ambideux ſerra noſme en laſſiſe. Vide les liures en 9 E. 3. 13. 31 Aſſ. 27. 17 E. 4. 6. 10 Aſſ. 4. 10 E. 3. 18. 2 E. 2. Aſſiſe 360. 1 Aſſ. 10. 3 Aſſ. 7. 32 H. 6. 27. 22 Aſſ. 66. 31 Aſſ. pl. 27. 29 E. 3. Aſſ. 366.

Co. Lit. 147. a.

(a) Co. Lit. 147. a. Et lopinion de (a) Finchd. en 41 E. 3. 15. fuit affirm pur bon ley, q̃ ſi le Manor de D. hors de q̃ le rent eſt graunt, ſoit recover per eign title, q̃ tout le rent eſt extinct, mes ſi le Manor de S. en q̃ le diſtres eſt limit, ſoit evict, uncore tout le rent remain. Iſſint

(b) Co. Lit. 147. a. ſi le graunte (b) purchaſe peel del Manor de S. le rent neſt pas extinct; pur ceo q̃ le rent iſſuiſt ſolement hors del Manor de D.

(c) Co. Lit. 147. b. Vide 17 E. 4. 6. ſemblable caſe. Et fuit dit, q̃ ſi home (c) graunt rent hors de 3 acres, & graunt ouſter, que ſi le rent ſoit arere, q̃ il diſtreinera pur le rent en lun des acres, ceſt rent eſt intier, &

*, Kelw. 104. a. Co. Lit. 153. a. Perk. Seſt. 323. ne poit eſtre rent * ſeck hors de 2 acres, & rent charge hors del 3 acre; & pur ceo eſt rent ſeck pur tout, & uncore il diſtreinera

(d) Co. Lit. 147. b. pur ceo en le 3 acre. Iſſint ſi (d) rent ſoit graunt a 2 & a lour heirs, hors dun acre de terre, & q̃ bien liſt a lun de eux & ſes heirs a diſtreiner en meſm̃ lacre pur ceo; ceo eſt rent ſeck; car intant q̃ ils eſtoient joint̃nt ſeiſie dun entier rent, ne poit eſtre quãt a un rent ſeck, & quãt al auter rent charge, & ceſt diſtres eſt come appurtenant al rent: & pur ceo, ſi ceſtuy q̃ ad le rent

(e) Co. Lit. 147. b. mozuſt, le ſurvivor diſtreinera, & ſi ambideux graunt ouſter le

(f) Co. Lit. 147. b. rent al un, il diſtreynera pur ceo. (f) Mes ſi home graunt rent hors de black acre a un & a ſes heirs, & graunt a luy q̃ il poit diſtrein pur ceo en meſm̃ lacre pur terme de ſon vie, ceo eſt un rent charge pur ſon vie, & rent ſeck apres, diverſis temporibus.

(g) Co. Lit. 147. b. Auter̃nt (g) eſt ſi le diſtreſſe ſoit limit pur certain ans en meſm̃ la terr̃, la ceo remain rent ſeck entier̃nt, pur ceo q̃ le fr̃e & fr̃ak-tener̃nt eſt ſeck en tiel caſe. Mes fuit adjudge en le caſe al barr̃, q̃ lavowry fuit inſufficient pur divers cauſes. ¶ 1. Pur ceo q̃ en

Bridg. 109. lavowry il ne fait m̃tion daſcun terre forſq; del terre en q̃ il nad forſq; leaſe pur ans, &. quod conceſſit extra terram illam inter alia quend' reddit', &c. ou en ſon avowry il duiſt ad̃ derive le rent hors del terr̃ en ffee-ſimple ſolem̃t, car hors de ceo en judgm̃t del ley le rent pur vie fuit iſſuant. Et coment q̃ le Plaintiff, en barr̃ al avowry ad diſclose tout le verity del matter en ſpecial, que en judgment del ley fait pur lavowant, & ad fait ſon caſe

melior

meliox pur luy que lavowant ad fait pur luy meſme, uncoxe ceo ne fait lavowxy, que fault ſubſtance, bon; car lavowxy que eſt en le nature dun count doit contain ſufficient matt̃ ſur q̃ il poit aver judgment daver retoxn. Mes ſi lavowxy ou aſcun count ou replication, &c. fault foxm, ou omit circumſtance de temps, lieu, &c. la le plea de lauter party per ſon plea poit ſalver tiels imperfections, (a) mes ne poit ſuppliер defect del matter de ſubſtance. Vide 6 Ed. 4. 2. b. 6 H. 7. 10. 18 Ed. 4. 16. b. 18 Ed. 3. 34. Pl. Com. Barkleys Caſe 230. 38 H. 6. 17, 18, & 19. 22 Ed. 4. 2. 5 H. 7. 13. b. 7 H. 7. 6. b. &c. ℭ 2. Le avowant plead le graunt hoxs del (b) term pur ans ſolement, & conclud virtute cujus il fuit ſeiſie in dominico ſuo ut de libero tenemento pro termino vitæ ſuæ, que eſt repugnant dad̃ franktenement hoxs dun Term pur ans. Et iſſint judgment fuit done vers lavowant pur inſufficient pleading.

(a) 18 E. 4. 16. b. Doct. pla. 69. Co. Lit. 303. b. 8 Co. 120. b. Hetl. 174. Cr. Car. 209. 11 H. 7. 24. b. Kelw. 13. a.

(b) Doct. pla. 326. Devant 23. a.

CASES de Quare impedit.

Paſchæ 31 *ELIZABETHÆ*, Rot. 141.

2 Leon. 58. Sav. 107, 108.

JOhn Hall poꝛt Quare impedit verꝭ leveſque de Bath & Wells, & Th. Maunton Clerk Def. pur diſturber luy de pꝛeſenter al Vicaꝝ del Wollavington, appendant al Manoꝛ del Wollavington, dont le Dean del Windſor fuit ſeiſie en ſon demeſne come del fée, en dꝛoit de ſon Deanry, & pſenꝝ Rob. Pitman Son Clerk, q̄ fuit inſtitute & induct, & convey ceſt Manoꝛ al Countée de Leiceſter per leaſe pur ans, quel aſſign tout ſon intereſt al George Sidenham Chivaler, que grant ceo al Chriſtopher Roll, & duꝝ ſon poſſeſſion le Vicaꝝ devient void per le moꝛt del Robert Pitman, & le dit Chriſtopher Roll pꝛeſent un John Davis ſon Clerꝭ al dit Vicarage, que fuit admit, &c. & apꝛes le dit Chriſtopher Roll grant ſon intereſt en le dit leaſe al Pl', & puis le Vicaꝝ devient void per depꝛivation del dit John Davis, per que il appent al Pl' de pꝛeſenꝝ, & les Defendants luy diſturbe, al ſes damages, &c. A que leveſq̄ plead, que il claim riens ſoꝛſq̄ cõe Ordinary, & demaund judgment ſi ſans ſpecial diſturbance. Et Thomas Maunton dit, q̄ il claim riens en ladvowſon del Vicaꝝ, mes que il eſt Vicar del dit Eſgliſe, del pꝛeſentation del dit George Sidenham, que uncoꝛe eſt en vie, nemy noſme en le bꝛief, & demand judgm̄t ſi bꝛief. Le Pl' al plea del eveſq̄ pꝛia judgment, entant q̄ il claim riens en le Vicaꝝ, & fuit grant, mes ceſſet executio tanq̄, &c. Et quãt al plea del Thomas Maunton il demurꝝ en ley. Et le ſole queſtion del caſe eſt, ſi le Quare impedit giſt verꝭ leveſq̄ & incumbent, ſans noſmer del patron. Et fuit reſolve, que le bꝛief (a) abateꝝ; & q̄ le patron doit eſtre noſm̄ en le bꝛ, & t̄ pur deux cauſes. Primerm̄t pur ceo q̄ le patronage ſerꝝ en ceſt caſe recover verꝭ ceſtuy

(a) 2 Leon. 58. Sav. 107, 108, Palm. 309. Cr. Jac. 651.

ceſtuy q̄ ad riens en le patronage: & neſt reaſon, q̄ ceſtuy q̄ ē patrō ꝑt diſpoſſeſſe & ouſte de ſon patronage, q̄nt il ē eſtrang' & nient pty al bē, & noſmeſmt en ceſt cas q̄nt il poit eſtr̄ fait pty al bē. 2. Al comon (a) ley, lencumbent ne pleadeꝛ aſcun plea q̄ cōcern le droit del patrōage, & pur ceo ſerē incount reaſō, q̄ il ꝑt ſolemt noſme en le bē q̄ al comon ley ne poit defend le patronage, & ceſtuy q̄ ad le patronage, & q̄ poit pleader al droit de ceo omit en le bē. Car, al comon ley, cheſcun pleadeꝛ plea q̄ eſt apt pur luy, & ptinent a ſon caſe, come en Aſſiſe p̄s diſſeiſoꝛ (b) & tent, &c. le tent pleadē plea q̄ concern le tenācy & nemy le diſſeiſin, & lencūbent al comon ley ne pleadza al droit de patronage en q̄ il nad riēs, mes a ceo le patron pleadza: & le miſchief fuit, q̄ p le (c) feint pleading ou cōfeſſiō del patron en Quare impedit, lencumbent fuit ſans remedy, cōe le liuꝛ ē adjudge en 18 E. 3. 23. b. que fuit debāt le ſtat de 25 E. 3. Vide 22 H. 6. 28. a. 9 H. 6. 30. a. b. 31. a. &c. mes leſtat de 25 E. 3. c. 7. enable le (d) poſſeſſoꝛ, &c. (q̄ eſt tāt a dir cōe lēcūbēt, aps inductiō, coe ē tenᵘ en 4 H. 8. f. 1. Dyer) a coūt-pleadē le title pꝛiſe pur le Roy, & dadō ſon rās, & a mē & defendō ſon dit ſur la matt̄, tout ſoit q̄ il claim riens en le patronage, & p equity il pleadera p̄s touts comon plons, cōe les liures ſont en 9 H. 6. 30. a. b. 31. a &c. 22 H. 6. 28. a. 13 H. 8. 13. 14 H. 8. 29. Vide 39 E. 3. 30. 27 E. 3. 81. 46 E. 3. 13, 19. 47 E. 3. f. 11. a. b. 2 R. 2. Incumbent 4. 8 H. 5. 9. 7 H. 4. 34. 13 H. 4. 7. 22 H. 6. 26. 16 Ed. 4. 11. 2 H. 7. 14. 10 H. 4. Statham. Et ē deſtre obſerve, q̄ touts foits, q̄nt incumbent plead en barr, il pꝛimemt dit, q̄ il eſt perſona (e) impſonata eccleſiæ p̄d', &c. p q̄ eſt imply, q̄ il eſt admit, inſtitute, & abl̄ de pleadē en barr ſ. p̄s le *roy, q̄ il ē admit, inſtitute, & induct, & p̄s comon (f) plō, q̄ il eſt admit & inſtitut̄, car dōq̄s eſt eccleſia plena & cōſulta p̄s un comon plon, cōe t̄ē en 9 H. 6. 31. 22 H. 6. 27. 21 E. 4. 34. b. 24 E. 3. 30. 25 E. 3. 47. 38 E. 3. 9. a. 44 E. 3. 3 &c. Mes cē dirōit en le caſe al barr̄ fuit pꝛiſe & agrēe, q̄ q̄nt p le judgmt en le Quar' imp' le inheritāc, eſtat, ou intereſt del patrō en le patrōage & dē deveſt p le judgmt en Quar' imp' poꝛt p J. S. la J. N. q̄ (g) pſent (& ſō clerk reſceive) coviēt ēe noſm̄ en le bē; mes q̄nt lenheritance, eſtat, ou intereſt dl patrō ne ſerē deveſt p le judgmt, dōq̄s, il aut diſturb' ſoit noſme en le bē, ne beſoign a noſm̄ le dꝛoiturel patrō en le bē, & ove cē diſtity accoꝛdāt noſtre liures: car en (h) 42 E. 3. f. 7. a. un poꝛt Quar imp' p̄s aut̄, le Def. dit, q̄ il ne claim riēs en le patrōage, mes dit, q̄ leveſq̄ luy p̄ſent p laps, judgmt ſi toꝛt, &c. & la Belknap pꝛia bꝛief al eveſq̄, pur ceo q̄ il aver diſclaim en le patronage, & le Court ne voille pas graunter ceo, pur ceo q̄ intant q̄ neq̄ le patron, neq̄ leveſq̄ (q̄ en meſme le cas fuit

(a) Hob. 162. 1 Anderſ. 238. 46 E. 3. 14. a. Doct. pla. 230. 1 Leon. 45.

(b) 13 H. 8. 14. b. Co. Lit. 285. b. 303. b 2 Inſt. 414.

(c) 47 E. 3. 11. a. b.

(d) Hob. 319. Doct. pla. 230, 231 Hob. 161. 1 Leon. 45. Dyer. 1. pl. 8. 1 Jones 161.

(e) Doct. pla. 231, 232.

* F. N. B. 34. K. 2 Inſt. 356. 2 Rolls 349. Co. Lit. 133. b. 344. a. b. Cr. Jac. 463.

(f) 6 Co. 49. a. 2 Inſt. 356. 2 Rolls 349. Co. Lit. 119. b. 344. a. Cr. Jac. 463

(g) Noy 151. 2 Rolls Rep. 239.

(h) Car. Jac. 651. Fitz. brief 552. Br. quare impedit 24.

en lieu de patron) ne fuer nosme en brief, fuit adjudge, que le brief abatera; & si tiel brief serr maintenable, chescun patron p covin int estrang' & lencumbent poit re ouste de son advowsr: & ove ceo accordant 9 H.6.30.a.b.31.a.&c. 3 H.4.2.b. & 3.a. 13 H. 8.13. Mes en 7 H.4.25.37.la en Quare impedit, pur ceo q le psentation fuit solemt recov & nemy ladvowson, ne le patrō mise hors de possession, le brief fuit adjudge bon sans nosmer del patron. Si Quare impedit soit port vers le patron & incumbent, & le patron mourust pendant le brief, le mort del patron nabatera (a) le br, coīn est adjudge in 9 H.6. 31. car la sont deux mischiefs; un si brief abatera le disturbance serr dispuny, & coīt q le brief fuit bien commence, uncore le Pl serra sans remedy, car fault disturber: & del auter part lauter mischief est, si le brief nabatera mes le Pl procedet al judgment & execution, le very patron serr hors de possession: & intant que en lun cas, si le droiturel patron serra mise hors de possession, il ad remedy per brief de Droit a recontinuer ladvowson, & en lauter cas si le br abatet le Pl serr sans remedy, quel serr le greinder mischief, & a cest cause le brief essoyet, & ne serr abate: & ove ceo accordant 7 H 4.26. b. 13 H. 8.13. 9 H. 6.57. Et Quare impedit bien comence per divers, come coparceners ou joyntenants, &c. ne abatera p le (b) mort del un de eux; ne Quare impedit port p baō & feme nabatera p mort la feme, pur ceo que autrement le Pl, si les 6 moys sont passe, serr sans remedy, come les liures sōt en F.N.B. 35.b. 38 Ed.3.43. 37 H. 6. 11. 7 H. 4. 19. 14 H. 4. 12. 9 H.6.30.57. 1 H.5.13. 17 Ed. 3.11. 7 Ed.3 304. Mes si le Roy present, & son Clerk est admit & institute, &c. la le Quare impedit poit estre port pur necessity vers leveskz ou lencumbent, car ne gist vers le Roy, issint del pape si ust usurpe, 12 H. 8.12. 14 H.7.15 &c. Vide 47 E.3 (c) f.11.a.b. Le Roy port Quar. impedit vs W. Dawtre deslise de Retfield, & fist son title, entant que Hammond eveskz de Rochester ad present al dit esgl p usurpatiō esteant void (ladvowson de q de dr appent al 3 files & hres) son Clerk, q fuit admit, institute, & induct, & puis lencumbent resign, & le successor pstent aut, q fuit admit, institute, & induct, & il mourust, p q appēt al Roy a pstent, intāt q leveskz ad gain cest advowsō a luy & ses sucs sans conge, p q ladvowson fuit devenus en mortmain: le Def. plead, q il est parson del pstmt de William Wyclesey predecessor leveskz que ore est, Thomas per nosme, issint q le patronage est en Thomas, le quel, nous intendō, covient estre nosme en le brief, p q nantendomus my, q nre seignior le Roy a cest brief, en q̄l patron nest my nosme, voille estre respondr; car nous

(a) 2 Leon. 58. Sav. 108, 109. Cr. El. 324. Cr. Car. 592. 2 Siderf. 94. Goldsb. 46.

(b) Cr. Jac. 19. Dyer 279. pl. 8. Dall. 7. F.N.B. 35.l. Cr. Car. 519. 10 Co. 134. b. Moor 9. Cr.El. 324. Co. Lit. 198. a.

(c) Sav. 109. 47 E.3.10.b.11.a.b Fitz. quare impedit 141. Br. quare impedit 40. Br. mortmain 6.

nons intendomus, que Quare impedit ne gist my devers lencumbent sole, sans nosmer le patron, ou est expressement mantre, q̄ la est patron que poit pleader en barre del Pl' ou auter chose, de ouster le Roy del action, que ne gist en le conusans del incumbent a pleader : Et fuit adjudge, que le brief le Roy fuit bon vers lencumbent sole, pur ceo que il poit doner, per lestatute, quel respons il voit sole, en maintenance de son possession de son Esglise, & le ore evesq̄ que est successor nest pas disturber, car le Defendant vient eins per le predecessor, & pur ceo ne serr̄ charge ove damages ou costs. Et puis le Plaintiff John Hall perceivant, en le principal case, le resolution del Court, discontinue sont suit, & perde son presentation illa vice.

CASES de Quare impedit.

Paſchæ 40 *ELIZABETHÆ.*

Sir *Hugh Portman*'s Caſe.

(a) Co. Entr. 481. pl. 4.

IN (a) Quare impedit per Sir Hugh Portman vs larchevesq; de Canterbury, & Mountgomery Clerk, ad eccleſiam de Chelſey, in Comitat' Somerſet, & fiſt ſon title per reaſon dun graunt dun prochein avoidance unica vice, divers points fuer reſolve. ¶ 1. Si le Plaintiff en Quare impedit ſoit nonſue (b) apres appearance, ceo eſt peremptory, & bon barr en auter Quare impedit, coment que ſoit port deins 6 moys; & le reaſon de ceo eſt, pur ceo que le Def. ſur title fait (per q̃ il deveign actor) avera brief al evesq; de admitter, &c. ſon Clerk en meſme leſgliſe, &c. que eſt bon barr en auter Quare impedit, & ove ceo accord 19 Ed. 4. 9. a. 22 H. 6. 44. b. 45. a. 33 H. 6. fol. 155. 20 Ed. 4. 14. 21 Ed. 4. 2. b. &c. F. N. B. 38. K. Meſme la ley, ſi le Plaintiff en Quare impedit diſcontinue (c) ſon ſuit, le Def. ſur title fait avera brief al evesq;, & per conſequence ceo eſt peremptory: & ove ceo accord 31 H. 6. 15. a. Mes ſi le brief de Quare impedit deins les 6 moys abate pur faut (d) latin, ou inſufficiency del form, ceo eſt le default del Clerk, & ne ſer peremptory al Plaintiff, ne le Defendant ſur ceo avera brief al evesq;, mes le Plaintiff poit aver novel brief de Quare impedit, & ove ceo accord 3 H. 6. 3. a. 31 H. 6. 15. a. F. N. B. 38 H. Vide 34 Aſſ. pl. 9. ſemblable. Iſſint ſi le bre abate p le miſnoſmer (e) del Plaintiff ou Def. ſi le Pl' conſeſſe ceo, le Defend navera brief al evesq;, car t poit eſtr le default del Clerk en eſcrier de ceo: & ove ceo accord F. N. B. 38. M. Vide 31 H. 6. 15. a. Mes ſi le Pl' ſoit fait Chivaler (f) pend le bre le bre abatera, & le Defendant avera bre al evesque, & per conſequence ceo eſt peremptory, car (come nous vetomus p common experience en ceux jours) ceo eſt fact del Pl', & nul eſt compel ou cohert a ceo.

(b) Br. quare impedit 136. Br. peremptory 74. Br. brief al Eveſque 21. Br. nonſuit 62. 2 Rolls 388. Hob. 138. Co. Lit. 139. a. Dall. 81, 82.

(c) Hob. 138. Br. brief al Eveſque 26.

(d) 2 Rolls 387, 388.

(e) F. N. B. 38. m.

(f) 1 E. 6. cap. 7. Styles 187.

Trin.

CASES de Quare Impedit.

Trinitatis, 27 ELIZABETHÆ.

Rot. 320.

(a) *Baskervile's* Case.

EN Quare Impedit in Communi Banco le case fuit, que An' prim' Mar', title a ꝑsenť per laps fuit devolve al Roign al Esglise de Cusep en le County de Heref. Sir Nicholas Arnold le Patron ꝓzesent un Evans, que a ceo fuit admit, institute & induct, & mozust, &, si le Roign ad pard son title a ꝑsenť ꝓ laps ou nemy, fuit le ꝗstion. Et fuit adjudge, ꝗ le Roign ad(b)pard ceo, car le Roign nad ꝗ unam & unicam præsentationem hac vice, ꝗ ne poit estre extend al 2 avoidance: Car negligence a ꝑsenť perdť le subject ũ ꝑsentm̃t soleṁt ꝓ laps, & nemy divers: & si le Roign ad(c)primã & proximã advocationẽ graunt a luy, el ne poit pzendre le 2. Et auterm̃t graund inconvenience ensuer al Patron, car le Roign poit absteiner de pzesenter, & permitt divers a pzesenť, ꝓ usurpaṫ l'un aps autť, & ꝑnder son tourn qm̃t el voit, & le Patron poit estre en manner ꝓ ceo disherit. Et l'estatute de(d)Prærog' Regis, (e)q̃d nullum tempus occurrit Regi, est destre intend, qm̃t le Roy ad estate ou (f) interest certein & permanent, & nemy qm̃t son interest est specialm̃t limitt, qm̃t & com̃t il ceo ꝑndza, & nemy auterm̃t; car la temps est le substance de son title, & en tiel case tempus occurrit Regi. Et issint fuit auterfoits adjudge Pasch' 28 El. Rot' 412. in Communi Banco, enť Beverly(g)Pl', & l'Archevesq̃ de Canterbury, & Gabriel Cornwal Def. pur l'Esglise de Somerby, in Com' Lincoln.

(a) Co. Ent. 489. pl. 7. Cro. El. 356. 1 Leon. 280, 281. 2 Leon. 50.
(b) Palm. 354, 357. 1 Roll. Rep. 459. 2 Roll Rep. 422. 2 Roll. 368. Noy 25. Winch. 96. Hob. 152, 166. Cro. El. 119, 180, 790. Cro. Jac. 44, 54, 216, 691. Cro. Car. 356. Owen 5, 89, 90. Goldsb. 86, 78, 83. pl. 4. Mo. 260, 900. Dyer 277. pl. 55. Stanf. Prær. 33. a, b. Dr. & Stud lib. 2. c. 36 Lit. Rep. 99, 383.
(c) 1 And. 149. Plowd. 243. a.
(d) Stanf. Prærog. 32, 33.
(e) 6 Co 49. b. Hob. 347. Lit Rep. 99, 340. Co. Lit. 41. b. 90. b. 118. a. 294. b Hard. 24, 25. 1 Jones 79. 2 Inst. 273, 360. Godb. 297, 305, 312, 317. Plowd. 243. a. 321. a 1 Roll. Rep. 165. 2 Roll. Rep. 422. 1 And. 149. Palm. 354, 357. Cro. El. 44
(f) Godb. 305.
(g) Moor 224, 269, 270. Cro El. 44. Cro. Jac. 216. Ow. 2. 1 And. 148, 149. Goldsb. 44.

Hillarij,

Hillarij, 43 *ELIZABETHÆ*, In Communi Banco, Rot. 1108.

Maund's Case.

IN Replevin enter Maund & Gregory le Defendant mẽ, que un rent charge, hors dun meale & certein ẽres, fuit graunt p fait a un & a ses assigns, pur son vie, pro consilio impendendo, payable annuelm̃t al 4 Feasts, & pur default de paym̃t, si soit demaund. q̃ serẽ loyal al grantée & ses assigns a distreiner, le grantée assign le rent al avowant, le ten̄t attorn, l'assignée sur le ẽre demaund le rent puis le jour, & pur default de paym̃t distrein & avow, ꝑ q̃ le Pl' demurr en ley. In cẽ case fuit resolve: ¶ 1. Que rent graunt à un & ses assigns, pro consilio impendendo, poit estre (a) assign ouster per l'expres parols del graunto, que graunt ceo a luy & ses assigns; car modus (b) & conventio vincunt legem. ¶ 2. Que en cest case ne besoign pur l'assignée a demaunder le rent al (c) jour, come il doit en case de (d) reentry (car la tout l'inkest ou estate serẽ defeat) ou q̃m̃ ascun summ (e) Nomine pœnæ serẽ forf. en ambideux ceux cases demaund covient estr̃ fait p̃cisem̃t al jour, un convenient temps devant le coucher del soliel, en l'un case en respect del condic̃, & en l'auk̃ en respect del penalty. Mes en case de distresse, cestuy q̃ ad le rent poit demaund ceo a q̃l tẽps q̃ il doit, car nul ꝑde ou penalty sur ceo ensuera, mes soleim̃t remedy a bener a son rent q̃ est arere, & q̃ e due a luy: Et iſſint fuit adjudge in Com' Banco, Mich. 40 & 41 Eliz. enk̃ Stanley & Read, ou le case fuit, que un rent charge fuit grãt, payable a certein jour, & si ceo soit arere & (f) demaund, q̃ bñ lirroit al grauntée a distrainer; l'avowant monstre, comm̃t q̃ il fist demaund al jour, le Pl' trauers, q̃ il ne fist demaund a m̃ le jour (entendant a fair le jour parcel del issue) sur q̃ le Def. demurr en ley, & fuit adjudge encounk̃ le Pl', car si le demaũd fuit & ascun tẽps puis le jour & devãt le distresse, suffist. ¶ 3. Fuit resolve, que si home q̃ al (g) rent seck, payable annuelm̃t al

(a) Moor 56. 2 Roll. Rep. 473. Co. Lit. 144. a. Dy. 65. pl. 1.
(b) 12 Co. 71. Co. Lit. 19. a. 166. a. 180. a. Godb. 254. 1 Roll. Rep. 262. 2 Roll. Rep. 332. 2 Sand. 167. Winch. 48, 96. Hob. 40. Lit. Rep. 208. Godb. 254.
(c) 1 Roll. Rep. 235. 2 Roll. 426. Co. Lit. 144. a. 202. a. Noy 22, 23 Hob. 207
(d) Co. Lit. 144. a.
(e) Moor 357, 358. Hob. 82, 133, 208, 1 Roll. 459. Cro. El. 383. Golds. 129, 130, 186. Hutt. 42, 114. 1 Brownl. 179. Palm. 206, 490. Mod. Rep. 89.
(f) 1 Sand. 253, &c. Cro. El. 548, 721. 1 Leon. 190, 191.
(g) Hetl. 16. Lit. Rep. 34. Hob. 207. Cro. Car. 508. 2 Roll 427.

al feast de Paschæ, ad un foits seisin del rent, & le feast de Paschæ passe, & nul tend ou dõ fait del rent, il poit, cõm̃t q̃ soit aps le jour de paym̃t, deigñ al tre, & la dõ le rent, & com̃t q̃ tent del tre ne soit la, unc̃ sur tiel demaũd q̃ nul soit prist a payer le rent, & est denier en ley, sur q̃ cestuy q̃ ad le rent aver̃ Assise, entant q̃ nul penalty sur ceo inſuera, mes soleyt dañ remedy de recov̄ son rent & les arrerages, ove damages & costs, & ove c̃ accor̃ Litt. fo. 51. & liure d'Entries fo. 79. b. 29 Ass. p. 52. Mes en m̃ le case, si le tent soit al darrein instant del feast de Paschæ prist sur le tre a payer le rent, & cestuy q̃ ad le rent nascun pur luy vient a demaũder ou receiv̄ ceo, la cestuy q̃ ad le rẽt ne poit ven̄ en absence del tre tent & dõ ceo, & issint fair luy q̃ disseisor, & renõ damags & costs sans ascã default en luy: Mes en tiel case, cey q̃ ad le rẽt, pur c̃ q̃ default fuit en luy doit fair dõ de ceo sur le tre al plon del tent, & sil ne poit luy trov̄ sur ascun pt del tre hors de que le rent est issuant, donques en tiel case il covient dõer le rent al prhein feast de Paschæ ove touts les arrerages, & com̃t q̃ c̃ soit en l'absence del tent, unc̃ c̃ amounta a un denier en ley, & sur c̃ cestuy q̃ ad le rent recovra touts les arrerages, damages & costs.

Co. Lit. 153. b.

Cro. Car. 508.
1 Roll. Rep. 60.
2 Roll. 427.
Hob. 207.
Co. Lit. sect. 233.

2 Roll. 427.

Hob. 207.
2 Roll. 427, 428.

2 Roll. 428.

Discon-

Diſcontinuance de Proces, &c. per mort la Roigne.

Trinitatis, 1 Regis *JACOBI.*

Moor 748. Cro. Jac. 14.

LE reſolution des Juſtices puis le mort le Roign Elizabeth concernant diſcontinuance des proces, &c. Sont deux manners de reſummons & reattachments, l'un general, l'auter ſpecial. L'effect de gen̄l eſt, que le Roy direct briefe (exempli gratia) al Bank le Roy en ceſt form, Mandamus vobis, quod ad ſectam noſtram omniumque ligeorum populi noſtri, qui proſequi voluerint extra & ſuper omnia ſive aliqua recorda, placita, brevia, præcepta, proceſſus, billas, loquelas, appella, fines & alia memoranda quæcunque in Curia noſtra coram nobis exiſtentia, vel in poſterum coram nobis proventur', omnimoda brevia reſummonition', reattachiament', & omnium aliorum proceſſ. pro nobis & dictis ligeis populi noſtri in hac parte habend', ſecund' bonas intentiones & propoſita ſubſcript', mutatis mutandis, prout caſus requirit, ſecund' diſcretiones vr̄as adjudicetis. Sp̄ial reſumm̄ons eſt de tiel form: Rex Vic̄ Salutem. Reſummoneas per bonos ſummonitores A.B. q̄d ſit coram nobis in cr̄o, &c. ubicunque tunc fuer' in Angl', audit' record' & judic' ſuum de loquela quæ fuit in cur' dom' Hen' nuper Regis, &c. ita qd' loq' illa tunc ſit in eodem ſtatu quo fuit in priſtina curia præd' nuper Regis in octabis, &c. ultim' præterit', de quo die loquela præd' adjornat' fuit uſque, &c. tunc proxim' ſequen', ante quem diem loq' præd' remanſit ſint die, eo q̄d præd' nuper Rex diem ſuum clauſit extremum. Et nota ſur le general reſummons le original & le iſſue (ſi aſcun ſoit joyn) eſt revive, car ceo eſt plein record, & doit eſtre entire, mes le proces devant le iſſue joyn, ne le vouch ne le garniſhment, &c. ne ſer̄ revive ſans eſpecial b̄ recitant tout le ſp̄ial p̄ceding. 5 H. 7. 40. a. 9 H. 6. 41. a. 13 E. 4. 1. a. b. 1 E. 5. fo. 2. a

Et

Et appiert per le liure dEntries tit. Reattachment 499. que ſi iſſue ſoit joyn, & Jury retorn, & jour done pur trial, devant q̄l jour le Roy morust, uncore per ſpecial reſummons tout ſerra revive, car le Jury fuit retorn de record, & le record de ceo fuit fait plein & pfect: & ove ceo accord 3 Ma. 118. (a) Dyer. Vide 21 E. 3. 44. contr̄ en caſe de aid pr̄er, car la le Jury n'eſt revive come la eſt tenus, mes Ven' fac' de novo ſer̄ agard̄. Et eſt aſcavoir, q̄ le (b) Def. ne unq̄s aver̄ reſummons ou reattachm̄t, pur ceo q̄ il navoit ne poit aver̄ ſumm̄ ou attachm̄t: Et pur c̄, al com̄ ley, ſi un v̄dict uſt paſſe pur le Def. & devāt le jour en Bank le Roy mor̄, en c̄ cas le Pl̄ eſt diſcontinue, & le Def. poit p Certiorari remove le rec̄, & com̄t q̄ les pties ne unq̄s pleader̄ aſcun plea, unc̄ le Def. covient ſuer Scire fac', & ſ̄ c̄ dad̄ judgm̄t, mes ſans Scire fac' il naver̄ judgm̄t, p̄ ceo q̄ les pties nont jour en Court, & le Scire fac' revid̄a le rec̄, & donera jour al pties, enconr̄ l'opin̄ de Littleton 10 Ed. 4. 13. b com̄t q̄ il dit q̄ iſſint fuit adjudge, q̄ le Def. en tiel caſe maintenant averoit judgm̄t. Mes al com̄ ley p le demiſe le Roy le plea fuit diſcontinue, & le proces q̄ fuit agard, & nient retorn devant le mort le Roy fuit pde: Car p le h̄e del p̄deceſſor rien poit eſtre execute en le temps del novel Roy, ūnō q̄ il ſoit en eſpecial caſes; car p le mort le Roy, nō ſolem̄t les (c) Juſtices de l'ū Bank & l'auf, & Barons del Eſcheqūr, mes les Viſc̄ aury & eſchetors, & touts Cōmiſſions de Oyer & Terminer, Gaol delivery, & Juſtices de Peace, ſont determine p le mort le predeceſſor q̄ eux fūt: Et pur le remedy de ceo fuit Leſtatute de 1 Ed. 6. (d) c. 7. fait, q̄ purview que p le demiſe le Roy aſcun actiō, ſuit, bill ou plaint, That ſhall depend between party and party, in any of the Kings Courts, and other Courts of Record, ſhall not in any wiſe be diſcontinued or put without day, but that the proceſs, pleas, demurrers and continuances, ſhall ſtand good and effectual, and be proſecuted and ſued forth in ſuch manner and form, and in the ſame eſtate, condition and order, as if the ſame King had lived. Iſſint q̄ ore, ſi aſcun judicial writ ou proceſs en aſcun Court de Record fuit agard en temps del p̄deceſſor, ceo ore poit eſtre execute en temps del ſucceſſor, 1 Eliz. 165. accordant. Mes uncore ceſt Act nad provide rēedy pur touts les miſchiefs. Car ℔ 1. ſi l'original ne ſoit (e) retorn devant le mort le Roy, ceo eſt pde, car les parols ſont dependant en aſcun Court: Mes en appeal de mort, ſi le writ ſoit deliv̄ al Viſc̄ deins l'an, & devant le retorn de ceo, ou q̄ le Viſc̄ ad fait riens, le Roy ſoy demiſt, & l'an erpire devant le jour del retorn, en ceſt caſe le common ley donera remedy al Pl̄, ſ̄. un Certiorari al Viſc̄ retornable en bank le Roy, & ſur ceo le

(a) Dyer 118. pl. 78.

(b) Co. Lit. 130. b.

(c) Moor 176. 2 Keb. 375. B. N. C. 203. 1 And. 44, 45. Dyer 165. pl. 2. 1 El. Dyer 165. 1 E. 4. 3. 1 E. 5. 1. 4 E. 4. 44. 1 H. 7. 2.

(d) 1 And. 44, 45. Cro. Jac. 14. Cro. Car. 10. 1 Roll. Rep. 165. Co. Lit. 325. a. Yelv. 52. Hutt 82.

(e) Dyer 165. pl. 2. 1 And. 44, 45. Latch. 110. 5 Co. 47. b. 2 Sid. 94. Cro El. 677. Cro. Jac. 14.

le Pl' avera reattachm̃t,coment que ceo ne vient eins per le retorn del Writ̃ mes per Certiorari;& le reason est, pur necessity del matt̃,car autrem̃t le Plaintiff, que loialment purchase son bre deins l'an sans ascun default en luy,perdra son appeal l'an esteant ore passe,& pur ceo entant q̃ p act en le ley bre est discontinue,le ley donera mean a rebiver ceo, au fine que le pty ne sra sans remedy. Jissint si home purchase Formedon vers pernor des profits deins l'an apres title accrue, si devant le retorn del brief,&c. le Roy soy demist, le bre serr̃ remove en le Com̃ Bank p Certiorari,& sur ceo si avera resummons,pur le mischief, com̃ est tenus 10 E.4.13.b & 14.a. ¶ 2. Per le mort le Roy les offices de(a)Writ̃ sont determine,& pur ceo tanqz novels patents de lour offices rien poit estre fait: Mes en (b)Londres & auls lieus ou sont Writ̃ dinheritance p chre, la ils potent execute ascun pces ou judicial bre agard in temps del predecessor. ¶ 3. In le county Court, & autiel Courts,q̃r ne sont Courts de(c)record,ceo remain come fuit al common ley,car les parols del Act sont in any of the Kings Courts,or other Court of Record. Aury Lestatute extend solem̃t al actions,suits,&c.enter party & party,& pur ceo, ceo n'extend al cases ou le(d)Roy est pty: Et ovet accord Stat. 98.b & pur ceo est necessary a scaver q̃ le comon ley est en tiels cases. Si(e)information de intrusion,ou auc̃ informac̃ soit p̃sent, ou merem̃t pur le Roy, ou tam pro dom' Rege quam pro seipso, & le Def. plede al issue, ou demurrer soit joyn,& puis le Roy morust,tout est abate & voue, forsqz solem̃t l'information, & ceo estoiera: Car l'entry en l'Eschequer est (mostrant le continuac & mort le Roy H.8.) per q̃d loquela remansit sine die, & dominus Edwardus ipsum nuper regem in regimine hujus regni succesit,ac regimen ejusdem regni super se assumpsit,super quo concordatum, q̃d prædict' defendens attachietur de novo ad respondend' dicto dom' Regi nunc,& sur ceo attachm̃t est agard, sur le retorn de q̃l le Defendant appiert & pleadet de novo: car com̃t que voier est. q̃ le Roy in genere ne morust(car est nul * interregnum)uncore in hoc individuo s̃. Henry le Roy,& Edward le Roy,&c. morust. Et ceo appiert p record Hill' anno 6 Ed.6. Rot.50. Information de intrusion fuit prefert vers John Schrymsal Esqz pur intruding e le Manor de Offeley en le County de Stafford. Simile recordum Michael' anno 6 E.6.Rot' 15. information prefert p Attorney le Roy pur le Roy solement vers Michael Harecourt sur Lestatute de Maintenance:Hill' 5 E.6.Rot.23. in Scaccario in information sur Lestatute de 32 H.8.pur buying de title, tam pro dom' Rege quam pro seipso,& ops issue le Roy morust, & Def. appiert sur le

(a)Dyer 165.pl.2. 1 And. 44.
(b)3 Co.72.b.
(c)4 Co.11.b. Co.Lit.260.a.
(d)Cro.Car. 10.
(e)Moor 748. Cro.Jac.14. Cro Car.10,11. Dost.pla.3. Hutt.82.Cawly 80.
*7 Co.1.a.Calvin's Case.

le attachm̃, & plead de novel: Simile per idem Recordum Rot. 24. ſimile per idem Recordum Rot. 54. ſimile Mich. 1 & 2 Ph. & M. in Scaccario Rot. 131. en inforꝛmation de intruſion vers Rich. Alford, que appiert & plead un ſpecial plea, ſur que fuit demurr̃ en ley, & le demurr̃ enter, & puis le Roign Mary moꝛuſt, & ſur ceo Subpena iſſuiſt d'appearer de novo, retoꝛnable Term' Hill' 1 Eliz. q̃ eſt in ligula brevium ibidem, & ſur ceo le Defend̃ plead auꝛ ſpeꝛ plea, ſur que iſſue fuit pꝛiſe. Et nota a tiel effect come les pꝛeſidents ſont en l'Eſchequer, iſſint ils ſont aury en Bank le Roy, q̃n a touts manners d'inforꝛmations. Simile Paſchæ 5 E. 6. Rot. 38. ou en populer action le Roy moꝛuſt ap̃s demurr̃ ſur l'evidence, & devãt judgment, & le Defend̃ plead de novo. Sur queux recoꝛds le ley appiert d'eſtre, que en touts les dits caſes le Roy eſteãt mereꝛ̃t party, ou q̃n l'inforꝛmation eſt tam pro dom' Rege quam pro ſeipſo, q̃n le Roy moꝛuſt devant judgment, tout le pꝛoceding ſur l'inforꝛmation eſt tout ouſterꝛ̃t abate & pde, quia Rex Hen', &c. fuit pars qui mortuus eſt: mes l'inforꝛmation ou inditement, que eſt recoꝛd pur le Roy eſtoiera, & le dit Defend̃ ſerra chaſe a reſpondre a ceo de novo, & riens eſtoieꝛ̃ ſoꝛſq; l'inforꝛmation, car ceo eſt recoꝛd & ne poet abater. Et le ley ad grand reaſon d'ceo, car ſur pluſoꝛs penal ſtatutes le ſuit eſt d'eſtre commence deins certein temps, & pur ceo, ſi l'inforꝛmation ou enditement ne continueꝛ̃ en foꝛce apꝛes le moꝛt le Roy, l'offence ſerra diſpuny p̃ le moꝛt le Roy, que eſt l'act de Dieu. Mes ſi le Roy poꝛt oꝛiginal bꝛief come de Quare impedit, &c. la per le moꝛt del Roy la bꝛief abateꝛ̃, quia le Roy pur que judgment ſerra done, eſt moꝛt, & apꝛes le moꝛt le Roy, que eſt party, nul pꝛoces poit eſtre agard ſur l'oꝛiginal, come poet eſtre ſur l'inforꝛmation ou enditement. Vide Mich' 3 & 4 Eliz. 206. Vide 4 Ed. 4. 43 & 44. & Brook tit. Offices 25. Si un ſoit endite en temps del un Roy & plead al iſſue, & puis le Roy moꝛuſt, il pleadꝛa de novo, come poies veyer en le caſe de Edward Smith, que plead al iſſue ſur enditement de felony en Midd' en 3 & 4 Ph. & M. en Bank le Roy, & puis le moꝛt le Roign Mary replead en 3 & 4 Eliz. & fuit acquit. Iſſint Clement Palmer eſteant arraign en Bank le Roy ſur un nonſuit en appeal al ſuit le Roign Trin. 4 & 5 Ph. & Mar. & plead al iſſue, le Roign Mary moꝛuſt, & Mich. 1 & 2 Elizabethæ il replead. Vide Paſchæ 1 Edw. 5. travers d'un office en le Chauncery, & le recoꝛd miſe en Bank le Roy, & puis le Roy moꝛuſt. Et per le dit Statute de 1 Ed. 6. eſt purview, That in all caſes, where any perſon or perſons heretofore have been, or hereafter ſhall be found guilty of any manner of treaſon, murder, man

Cro. Jac. 14.

Cro. Jac. 14. Doct. pla. 3.

Dyer 206. pl. 8.

Cro. Jac. 14.

ſlaughter,rape,or other felony whatſoever,for the which judgment of death ſhall or may enſue,and ſhall be repryed to Priſon without judgment, &c. that the Juſtices of Gaol delivery ſhall have full power and authority, to give judgment of death againſt ſuch perſon ſo found guilty and repryed,&c. Devant ceſt Act,al common ley, ſi home ad eſtre envite & convict p verdit ou confeſſion devant aſcun commiſſioners,& devant judgment le Roy mojuſt, en ceſt caſe nul judgment puit aver eſtre done ; car le Roy,pur que judgment ſerra done, eſt mojt, & l'authojity de les Judges, que donek le judgment eſt determine: Et ceſt act remedy ceux ſpecial caſes;mes touts ſuits le Roy p original bill,infojmation ou enditement pur aſcun auter offence remain al common ley.

Mich.

Michaelis, 2 JACOBI.

Case de Fine levy per le Roy tenant in Tail, &c.

LE Roy fuit informe, q̃ divers Manors & terres fuer entail al Gilbert de Clare County de Glouc', & le Roy, q̃ ore est, est heir del corps del dit Gilbert inheritable al dit terre, ascun de queux Manors le Roy & auters progenitors, pur bon consideration, ount graunt a divers subjects, touts queux graunts (come fuit pretend) fuer en respect del dit auncient estate tail ousterment void. Le Roy que ore est, de son grace & bon volunt a ses subjects, & pur lour quiet & repose, requite Popham chief Justice & Coke l'Attorney general, a consider coment p ley il poet establier l'estate des dits patentées & auters claimant desouth eux, encounter le dit estate tail. Sur q̃ ils severalm̃t en le vacation temps consider sur cest point, & puis sur conference ils agreont en un, q̃ le Roy esteant tenant en tail p done fait a ascun de ses auncestors esteant subjects (cõe le q̃stion est move) poet, p fine levy sur grant & render, barr l'estate tail; & ceo pur divers reasons. ¶ 1. Entant q̃ le Roy est lie (a) p Lestatute de donis condition', come est adjudge & le Seig' Barkley's case in Pl.Com.240. p q̃l act le Roy est restrain de alienation, car est purview p m̃ l'act, quod finis ipso juris sit nullus, reason voet q̃ le Roy prendra benefit del Acts de 4(b)H.7. & 32(c)H.8. q̃ enable t̃nt en tail a barrer ses issues: Car est agree en tout nostre liures, q̃ le Roy p̃ndra benefit d'ascun Act com̃t q̃ il ne soit *nosm̃, 12(d)H.7.21.a.35(e)H.6.60. Seignior Barkley's Case, Pl.Com.240. & ẽra dure, q̃ le Roy esteant issue en tail dun done fait al subject, ẽra en pejor condic̃, q̃ sil n'ad estre Roy. ¶ 2. Est grand diffity, q̃t le Roy claim en respect de son natural capacity, come heir de corps, p formam doni cõe heir del corps dun subject, car la il serra lie p un Act de Parl', (& ceo fuit le principal reason del judgm̃t en le case del Sir Barkley, ou le done

(a) Devant 21.a.
1 Co.44.b.48.a.
5 Co.14.b.
11 Co.72.a.
1 Roll.Rep.153.
Plowd.243.b. 244.a.b.248.b. 251.b. 252.a.
(b) 4 H.7.cap.24.
(c) 32 H.8.cap.36.
* 11 Co.68.b.
1 Roll.Rep.151.
(d) 11 Co.68.b.
1 Roll.Rep.171.
(e) 1 Roll.Rep.151.

ſuit al Roy H.7. & al heirs de ſon corps.) Et q̃t le Roy claim choſe en reſpect de ſon royal & publique capacity, la un gñal Act ne liera luy, ſinõ q̃ il ſoit exp̃ſſem̃t noſm̃, ſinõ q̃ il ſoit en eſpec̃ caſes. ¶ 3. En le caſe al barr, le barr q̃ Leſtat de donis condic' operat', eſt vers les iſſues en tail; car tenant en tail meſme ſans l'aid del Act poet barrer luy meſme(& iſſint poet le Roy aury p ſpec̃ grant.) Donq̃s les iſſues en tail, al temps del fine levy p le Roy, ſont forſq̃ ſubjects q̃ur ſont lie p les dits Acts, & l'eſtate tail barr p le fine & pclam̃. Et nota, q̃ l'Act de 32 H.8. recite, que (for avoiding of all ſtriſes and controverſies) quel parol general [all] include aury le caſe del Roy. Et fuit obſerve, q̃ Leſtat de donis condic' q̃ lia le Roy dit, qd' dominus Rex (a) perpendens, qd' neceſſar' eſt in caſibus præd' ponere remedium, ſtatuit, qd' voluntas donatoris, &c. & Leſtatute de 4*H.7. q̃ done poyar a docter l'eſtate tail dit, The King conſidereth that Fines ought to of greateſt ſtrength to avoid ſtriſes and debates, and to be a final end and concluſion: It is enacted, that after the Fine engroſſed and proclaimed, &c. the ſame Fine ſhall conclude privies, &c. deins q̃ur pols les iſſues le Roy ſont include. Aury Leſtatute de 32 (b) H.8. purvieu, That all Fines levied of any Lands entailed to the perſon ſo levying the ſame Fine, or to any of his anceſtors, &c. & Gilbert de Clare fuit en poperty de ſpẽcy aunceſtor al Roy, & iſſint deins l'exp̃ſſe lett̃ del Act. Mes ſemble a eux q̃ aps le render fait eſt neceſſary d'aver Lres patents, a graunt̃ al conuſee, p expres pols, q̃ il poet ent̃ en la t̃re; car autrem̃t, le fine eſteant executory ſur graunt & render poet eſtre doubt, ſi le conuſee ſans aſcun tiel graunt poet ent̃ ſur le Roy. Et puis Mich. 5 Jac. aps le mort de Popham, ceſt opinion, ſur conſideration & conference eue ove Fleming & Coke chief Juſtices & Tanfield chief Baron, fuit affirm pur bon ley, pur les reaſons & cauſes avantdits. Et divers fines ont eſtre levy p le Roy accord̃ a ceſt reſolution.

(a) Plowd. 248. b.

* 4 H.7. cap. 24.

(b) 10 Co. 50. a. 32 H. 8. cap. 36.

Nevil's

Michaelis, 2 *Jacobi I.*

Nevil's Caſe.

EN meſme ceſtuy Term ceſt caſe per maundement le Roy fuit propound a touts les Juſtices. Anno 21 R. 2. Raſe Nevil Sr̃ de Raby fuit per Lres patents deſouth le grand Seal create Countée de Weſtmerland a luy & a les heirs de ſon corps, quel Raſe p Margaret Stafford ſon primer feme ad iſſue Raſe Countée de Weſtmerland, a que Charles jades Countée de Weſtmerland fuit lineal heir male del corps del dit Raſe le primer donée; & le dit Raſe le primer donée p Joan file de John de Gaunt Duke de Lancaſter avoit iſſue George Seignior Latimer (car touts ſon eigne freres ſont morts ſans iſſue male) de q̃ eſt linealm̃t diſcend Ed. Nevil, q̃ ore eſt le pluis prochein iſſue male al dit donée: Et puis Charles Countée de Weſtmerland fuit attaint p utlag' & p Parliament de haut treaſon, & devie ſans iſſue male, & ore le dit Ed. Nevil claime deſtre Countée de Weſtmerland. Et en ceſt caſe 3 queſtions fueront move a touts les Juſtices d'Engl'. ¶ 1. Si le dit limitation del dit dignity al dit Raſe & ſes heirs males de ſon corps ſoit deins Leſtatute de donis conditionalibus, ou fée ſimple conditionel al common ley. ¶ 2. Admittant q̃ ceo fuit eſtate tail deins le dit Statute, ſi p l'attainder de treaſon l'eſtate tail fuit forfeit, per un condition en ley tacite anner al ſtate de dignity. ¶ 3. Si l'eſtate de dignity fuit forfeit p l'Act de 26 H. 8 c. 13. ou q̃ le dit Ed. Nevil come heir male del corps del primer donée doit eſtre Countée de Weſtmerland. Et ceux points fuer argue & debate al Serjeants-Inn en Fleetſtreet per l'Attorney le Roy, & p le councel del dit Ed. Nevil. Et quant al primer fuit object que le dit dignity ne fuit deins Leſtatute de donis condition' pur divers cauſes: 1. Pur ceo q̃ ceo fuit un grand dignity derive del Roy come le fountain de

Weſtm. 2. cap 1.

tout dignity, & pur ceo neſt deins le dit Act. q̄ parle ſolemt̄ de
teñtis,quæ multotiens dantur ſub condition',viz.cum aliquis terrā
ſuam dat alicui viro,&c. iſſint ceſt dignity ne poet eſtre include
deins ceſt parol teneñts ou tre. 2. Leſtat dit, in omnibus præd'
caſibus poſt prolē ſuſcitat' hujuſmodi feoffati habuer' poteſt' alie-
nandi,&c.mes ceſt dignity fuit inherent al ſank del donée, & ne
poet eſtre alien ou grāt,ne puis ne devant iſſue,& p̄ c̄ tiels caſes
de dignity fuer̄ hors del miſchief, les pols,& l'intention des ſea-
ſors del Act de donis condic';& l'opiñ en Manxel's caſe in Plowd.
(a)Co.Lit.20.a. Com.grant de chose,q̄ ne concern terr̄ ou teñts ne(a)exercible en
(b) Co.Lit 19. a. terr̄ ou teneñts,cōe un(b)annuity,q̄ eſt pl̄onel,neſt deins Leſtat
20.a. 1 Roll.837. de donis condic', & ceſt dignity fuit dit fuit pl̄onel & anner al
ſank del donée, & p conſeq̄s ne poet eſtre entail deins le dit Act.
(c) 1 Roll.837,838. Hes fuit reſolve p touts les Juſtices hEngl', q̄ noſme de(c)dig-
12 Co.81. nity poet eſtre entail deins le dit ſtat̄ ; car en le caſe al barr ceo
Co.Lit.20.a. concern tre,car il fuit fait p les dits Lres-patents, comte de
Weſtmerland,q̄ p le cōmon ley eſt grand conſervator del peace,&
Sheriffs ſont appel Vicecomites,pur c̄ q̄ en ancient tēps ils fuer̄
come deputies al countées,com̄ q̄ ore ceo eſt change:Et pur ceo
tiel office de digñ haſcun lieu cōcern tre,& pur c̄ poet eſtre entail
deins le dit ſtat̄, cōe eſt dit en Pl.Com' en le dit caſe de Manxel.
(d) 1 Roll 838. L'office de Steward,(d)Receiver ou Bayliff de tiel Mano poet
eſtre entail deins le dit ſtat̄,pur c̄ q̄ eſt exercible deins tre: 5 Ed.
(e) Co.Lit.20.a. 4. l'office de(e)Marſhal hEngl' fuit entail, 1 H.7.28.b. eſtate tail
5 E.4.5.a. poet eſtre dun forreſtership, 18 E.3.27.office de ſerjancy ou cuſtody
(f) Co Lit.20 a. del(g)Eſgliſe de Nichol' fuit entail: 32 H.6.28.le counte de Salop
(g)Roll.838. fuit entail al John Talbot chlr̄,& a les hēs males de ſon corps;
Co.Lit.20.a. & jeo ay vieu un hē de Park' in ann' 27 H. 6. p q̄ Bromſter fuit
(h) Co.Lit.20.a. ſummū al Park' p le noſm̄ de Sr̄(h)Veſey, ove limitat̄ en le
hē a luy & les hres males de ſon corps. Et eſt aſcavoir, q̄ ſicbe
en ancient tēps les Senators de Rome fuer̄ elect à cenſu, of their
Revenues,iſſint icy en anciēt tēps ē cōſerring de nobility reſpect
fuit ewe a lour revenues, p q̄ lour dignity & nobility poet eſtre
(i)9 Co.124.b. ſuppozted & maintained: Et pur c̄ un chl̄r̄ doit aū(i)20 l.tre per
Co.Lit.69.a. ann', un barū 13 fees de chivaler & ū quart̄,ū counte 20 fees de
F.N.B.82.c. chl'r(car ne fuit aſcū Duke deins Engl', del tēps del conqueſt ſelz
11 E.3. & le Duke de Cornwal fuit le primer Duke puis le cōquеſt deins Engl'.)Et c̄ apptert p le ſtat̄ de Magna Charta cap 2.
(k)9 Co.124. b. car touts foits le 4 pt de tiel revenue,q̄ eſt requiſite p icy al dig-
2 Roll.515,516. nity,ſra pay al Roy pur(k)relief: Cōe le relief dun chl'r eſt 5 l.q̄ e
Co. it.69.b, 83.b. le 4 pt de 20 l.q̄ eſt le revenue dū chl'r;& le relief dūn bar̄ eſt 100
marks,q̄ eſt le 4 pt de ſon revenue,ſ 400 marks, & include 13
feods

ſeods dñ Chivaler & un quarter; & le reliefe dñ coũtée eſt 100 l. q̃ eſt le 4 part de 400 l. q̃ eſt le revenue dñ coũtée. Et appiert p̃ les recoꝛds del Eſchequer, q̃ le reliefe dñ Duke amoũteꝫ a (a) 200 l. & p̃ conſeqñce ſon revenue doit eſtre 800 l. p̃ annum. Et ceo eſt le reaſon en noſtre liures, q̃ cheſcun del nobility eſt p̃ſume en ley dañ ſufficient frankt-tenñt, ad ſuſtinend' nomẽ & onꝰ. Vide 5 H.6. 48. 11 H.4. 15. 14 H.6. 2. Vide le Counteſs de Rutlands Caſe, in le 6 part de mes Reports. Vide Cambden fol. 107. Necd' hæreditaria fuit hæc dignitas (ſcil't comitis) ver' cũ Gulielmꝰ Normanus, jam victor, ſummam rerum in hoc regno adminiſtraret, comites creati ſunt feudales, hæreditarij, & patrimoniales, ut in antiquis cartis videre eſt, de tertio denario comitatꝰ, i. qui de placitis p̃ven' in eod' comitat'. Et cheſcun baron & auũ de nobility eſt touts ſoits create daſcũ lieu. Et oꝛe, a q̃l value les dits aũciẽt rẽts en temps H 3. & E 1. a ceſt jour amoũteꝫ, cheſcũ ſcavoit. Et iſſint fuit cleremẽt reſolve, q̃ le dignity en le caſe en q̃ſtion fuit deins leſtatũ de donis condic. Et ove ceſt reſoluũ accoꝛd dicꝺ p̃ſidents & lerpiẽce & practiſe touts ſoits uſe: car le coũtée de North. fuit intail, p̃ le Roign M. al T. Percy & a les heirs males de ſon coꝛps, & pur default de tiel iſſue, q̃ H. ſon freꝫ ſerꝫ countée, a luy & a les heirs males de ſõ coꝛps, & en tiel caſe, p̃ lattaindꝛe de T. de treaſon, H. fuit puis ſon moꝛt coũtée de North. p̃ foꝛce de ſon remñ, & ſon iſſue enjoy ceo a ceſt jour. Iſſint A. Dudley fuit, p̃ le Roign El. create coũtée de Warwick, a luy & a les heirs males de ſon coꝛps, & pur default de tiel iſſue, q̃ R. ſon freꝫ ſerꝫ coũtée, a luy & a les heirs males de ſon coꝛps: & R. fuit create coũtée de L. en tail ove tiel limitat a ſon freꝫ A. & mults auũ p̃ſidẽts ſont a meſm leffect. Quãt al 2 point fuit reſolve, que coñ ceſt dignity ſoit deins leſtatũ de dõis cõdition' uncoꝛe p̃ lattaindõ ó (c) treaſõ (ſi leſtatũ de 26 H.8. navoit eſtre fait) ceſt dignity ad eſtre foꝛfeit, p̃ foꝛce dñ cõdition en ley tacite anner al eſtate de dignity: car ceux q̃ ſont countées ount office de grand truſt & cõfidẽce, & ſont create pur 2 purpoſes: (d) 1 ad conſulend' regi tẽpore pacis: 2. ad defendend' regẽ & patriam tẽpore belli: & pur tiel antiquity ad dõe eux 2 enſigns a reſembler ceux deux duties: car p̃imerñt lour teſte eſt adoꝛn ove un cappe de honoꝛ & coꝛonet, & lour coꝛps ove un robe en reſemblance de coũſel: ſeꝛõñt ils ſont ſuccinct ove un eſpée en reſembãce, q̃ ils ſerꝫ foial & loyal a defendꝛ lour p̃ince & pays: & de ambideux ceux Bracton ple en ſon 1 liuꝫ c. 8. (e) Comites, viz. ſive a comitat' ſive a ſocietat' nomẽ ſumpſer' qui etiã dici poſſunt cõſules a cõſuleꝺ'; reg' enim tales ſibi aſſociãt ad cõſuleꝺ' & regẽꝺ' popul' Dei, ordinãtes eos in magno honore, & poteſtat', & nõie quando

(a) 9 Co. 124. b.

(b) 6 Co. 52. b. Stiles 222. Hob. 61. Moor 767

(c) 3 Inſt. 19. 1 Jones 76. Lane 46. Godb. 325 Sawy. Argumt. in Quo warranto 34.

(d) 12 Co. 95.

(e) 9 Co. 49. a

quando accingunt gladijs, i. ringis gladiorum: p q̃ appiert ceux 2 fines, ſ. counſel & defence. Donques quant tiel perſon enconꝰ le duty & fine de ſon dignity, pꝛiſt non ſoleꝫt coũſel mes arms aury enconꝰ le Roy a luy deſtroyer & de t̃ eſt attaint p due courſe del ley, per ceo il ad forfeit ſon dignity per un condition tacite anner al eſtate de dignity, en meſme le manner come ſi teñ en tail dun (a) office de truſt miſuſe ou non uſe ceo, ceux ſont forfeitures de tiels offices a touts jour p force dun cõditiõ en ley tacite annexe a lour eſtates, come eſt tenus en 11 E 4. 1. 20 E. 4. 5, 6. 39 H. 6. 32. 22 Aſſ. 34. 8 H. 4. 18. 2 H. 7. 11. 14 H. 7. 1. Pl. Com. 370. Nevils Caſe. Quant al 3 point fuit reſolve p touts les Juſtices, q̃ ſi ceo nuſt eẽ forfeit p le common ley, q̃ p leſtatute de 26 H. 8. c. 13. le dit Charles ad forfeit le dit dignity, car les pols del act ſont, ſhall loſe and forfeit to the Kings highneſs, his Heirs and ſucceſſors, all ſuch Lands, Tenements and Hereditaments which any ſuch offendor ſhall have of any eſtate of inheritance in uſe or poſſeſſion, by any right, title, or means: & ceſt dignity fuit hereditam̃t, & en ceo le dit Charles avoit eſtate de inheritance, & ou leſtatuꝫ dit (in uſe or poſſeſſion) ceo ſuit a expꝛeſſer q̃ tout mãner de inheritances ſerra forfeit pur treaſon, & in lour judgm̃s touts inheritances fuer̃ ou en uſe ou en poſſeſſion (car ceſt act ne extẽd al dꝛoits ou titles) & fuit de neceſſity a adder ceſt pol uſe, car p le comon ley un uſe q̃ ne fuit forfeit̃ truſt & cõfidence ne fuit forfeit p attaindꝛe de treaſõ. Et quant un uſe fuit expꝛeſs, dõq̃s le additiõ de poſſeſſion fuit neceſſary, car autrem̃t riens forfeit uſes ſ̃ra done al Roy. Et pur ces fuit reſolve, q̃ annuity de inheritance ſer̃ forfeit per force de ceſt act per attaindꝛ de treaſon, car ceo eſt un hereditam̃t. Et ceo fuit le pꝛimer general act p q̃ un eſtate in tail fuit forfeit al Roy pur treaſon. Al common ley devãt leſtatute de donis conditionalib⁹, ſi fre uſt eẽ done a un & les hẽs males de ſon corps, en ceſt caſe cibꝫ le donoꝛ cõe le dõée ad poſſibility, le donoꝛ dũ reꝺ̃ ſi le donée moꝛuſt ſans iſſue male, & le donée dad̃ power daliener ſil ad iſſue male: Car ſi le donée ad iſſue fits, oꝛ a aſcun intent le condition fuit accõply, car poſt ꝑlem ſuſcitatam il ad poteſtatem alienandi, & le reaſõ de ceo ſuit pur t̃ q̃ il aiant ffẽ ſimpl' & aiant iſſue, ſõ iſſue ne poit avoiꝺ̃ alienation, pur t̃ q̃ il claim ffẽ-ſimple dõt ſõ pier poit luy barrer. Et comt q̃ le donée & ſõ iſſue auxi aps tiel alienatiõ moꝛuſt ſãs iſſue, uncoꝛe le donoꝛ q̃ avoit forfeit poſſibility ou cõditiõ en ley & nul reẽſion ou eſtate en luy ne poit recoiꝺ̃ la fre ꝺ̃s laliené, car p le alãt del iſſue le conditiõ fuit accomply a ceſt ẽtẽt, ſ. a fair alienation. Mes en meſm̃ le caſe al common ley ſi le dõée avoit iſſue

(a) 2 Rolls 355.

2 Rolls Rep. 341. Lane 46 Godb. 303 4 Inſt. 356.

Co. Lit. 19. 2.

iſſue fits & mozuſt, unꝭ le fits navoit un abſolute ffee-ſimple en luy, mes ſolemt̃ in le power q̃ ſon pier avoit, ſcil't, dalien, & ſi tiel iſſue mozuſt ſans iſſue, & ſans aſcun alienat̃ fait, le tre revt̃ al donoz, cõe Brian tient 12 E. 4. 3. & 18 E 3. 46. p Huſe: car collateral heir, q̃ neſt del corps del donee, nſt deins le forꝫ del done, le limitation eſteant al hẽs males del corps del donée, q̃l limitation des heirs males del corps, exclude touts collateral hẽs a inheriter: mes le policy del ley ſuit, a doñ poyar aps iſſue dalien, pur deux cauſes; lun, q̃ leſtate dũ purchaſer ne ſerõ avoid p un remote poſſibility, s̃, ſi le donée & ſon iſſue aury mozt̃ ſans iſſue, 2. Si il aiant ffee-ſimple naya poyar aps iſſue dalien. t̃ ſerõ en manñ un ppetuity & reſtraine dalienat̃ a touts jours, que le comon ley pur mults cauſes ne voille ymitt̃, & en 4 H. 3. tit' Formedõ 64 eſt adjudge, q̃ ou terres fuer̃ done en frankmarriage, & les donées avoient iſſue & mozont, & puis liſſue mozuſt ſans iſſue, que ſon collateral hẽe ne inheritet̃, car le doñ retovet̃ la tre in Formedon in reverter: & en le dit caſe, ſi le donée ad iſſue deux fits & mozuſt, & le eign fits ad iſſue file & mozuſt ſans iſſue male, le puiſne fits inheritet̃ un ffee ſimple p forman doni al comon ley: iſſint ſi tres fuer̃ done al un & a ſes hẽs females de ſon corps, & il ad iſſue fits & file & mozuſt, la file inherit̃ eſtate en ffee-ſimple p formam doni. Et nota bene, leſtatute de donis conditionalib⁹ ne create eſteate tail, mes de tiel eſtate q̃ ſuit ffee-ſimple conditionel, & diſcendible en tiel forꝫ al comon ley, cõe oze p leſtatute le tre diſcendet̃: & le ſole miſchief fuit, q̃ le donée aps iſſue avoit poyar dalien en diſheriſon de ſes iſſues, & barr̃ del reu̇ſion: mes appiert p le dit act, q̃ cõmt q̃ le donée avoit iſſue, uncoze il navoit abſolute fee, iſſint q̃ le collateral hẽe del iſſue inheritet̃, car les parols del act ſont: Et præterea cum deficiente exitu de hmõdi feoffaris, tenemtum ſic datum ad donatorem vel ad ejus hæredes reverti debuit, p formam in carta de dono hmõdi expreſſam, licet exit⁹ ſi quis fuerit, obiiſſet, p factum tamen & feoffamtum, &c. excluſi fuerunt hucuſque de reverſione, &c. p q̃ appiert, q̃ ſi le hẽe en tail devy ſans iſſue, & ſans aſcũ alienat̃ fait, q̃ le tre revertet̃ & p conſequence ne diſcẽdet̃ al collateral hẽe 30 E. 1. tit' Formedõ 65. Si donée en tail alien devant leſtatute, & puis ad iſſue, & puis liſſue devy ſans iſſue, le tre revt̃et̃; car il navoit poyar dalien al temps del alienat̃, mes tiel alienat̃ barret̃ liſſue, cõe eſt adjudge en 19 E. 2. tit. Formedon 61. pur ceo q̃ il claim ffee-ſimple. Nota bene, ceux rules unꝭ tient lieu en caſe de grãt de annuity a un & a les hẽs males de ſon corps, & a touts aut̃ inheritances, q̃ ne ſont deins le ſtat̃ de donis conditionalibus.

Co. Lit. 19. 2.

1 Rolls 841.

Co. Lit. 19. 2.

Co. Lit. 19. 2. 20. a

1 Rolls 837.

Hillar'

Hillarij 2 JACOBI.

Penal Statutes.

Dav. 69. b.
Hard. 448.
1 Siderf. 6.
3 Inſt. 186, 187.

EN meſm̃ ceſtuy Term ſur lẽes direct al Judges, da-ver lour reſolution concernant le validity dun grãt fait per le Roign Eliz. deſouth le grand ſeal, del penalty & benefit dun penal ſtatute, ove power a diſpenſer ove le dit ſtatute, & a fair garrant al Seignior Chauncelor, ou Garden de grand Seal, a fair quant des diſpenſations, & a q̃ux il a luy pleiſt, & ſur grand conſide-ration & deliberation per touts les Juſtices Dengliterre fuit reſolve, que le dit grant fuit tout ouſterm̃t encounter ley. Et en ceſt caſe ceux points fueront reſolve. Que quant un ſtatute eſt fait per Parliament, pur le bien publick del Realm, le Roy ne poit done le penalty, benefit, & diſpenſation de tiel act al aſcun ſubject, ou a doner poyar al aſcun ſubject a diſpenſer ove ceo, & a fair garrant al grand ſeal pur licenſes en tiel caſe de-ſtre fait: Car quant un ſtatute eſt fait pro bono publico, & le Roy (come le teſte del bien publique & le fountain de juſtice & mercy) eſt per tout le Realm truſt ove ceo, ceſt confidence & truſt eſt cy inſeperablement adjoyn & annex al Royal perſon del Roy, en cy haut point de ſovereignty, q̃ il ne poit transferre ceo al diſpoſition ou poyar daſcun p̃ivat perſon, ou al aſcun p̃ivat uſe: Car ceo fuit commit a le Roy per touts ſes ſub-jects, pur le bien publique. Et ſil poit grant le penalty dun act, il poit grant le penalty de deux, & iſſint in infinitum. Et tiel grant daſcun penal ley ne unques fuit vieu in noſtre liures, ne devant ceſt age aſcun tiel grant fuit unques fait: mes voier eſt, que le Roy poit (ſur aſcun cauſe movant luy, en reſpect de temps, lieu, ou perſon, &c.) fair un non obſtante

a diſ-

a diſpenſer ove aſcun particular pſon, q̃ il ne incourge̅ le pe- 3 Inſt. 154.
alty del ſtatute, & ceo accord ove noſt̃ liures: Mes le Roy ne
poit comẽt le eſpẽ de ſon juſtice, ou le bulle de ſon mercy, con-
cernant aſcun penal ſtatute, al aſcun Subject, come eſt avant-
dit. Fuit auxy reſolve, q̃ le penalty daſcun Act ne poit per aſcũ Cro. Arg. 109.
graunt le Roy eſtre levy, forſq; ſolement ſolonges le purport &
purview del Act; car le act q̃ done le penalty doit eſtre purſue
tantſolement, en le pſecution & levying de ceo. Et graund in-
convenience ſur ceo inſuera, ſi penal leys ſerront transferre al
Subject. 1. Juſtice per ceo ſerra ſcandalize; car quant tiels for- 2 Inſt. 48.
feitures ſont graunt, ou pmiſe deſtre graunt devãt q̃ ils ſont re-
cover, ceo eſt le cauſe de pluis violent & undue proceeding. 2. 2 Inſt. 229.
Quant eſt overtm̃t conus, q̃ le forfeiture & penalty del Act eſt
graunt, ceo eſt graund cauſe q̃ le act meſm̃ neſt pas execute; car le
Judge, & Jurors, & chelcun auter eſt per ceo diſcourage. 3. Sur
ceo enſueroit, q̃ nul penalty ſerra p aſcun act de Parliam̃t done
al Roy, mes limit a tiels uſes, ove q̃r le Roy ne poit diſpẽſer.
Et ſur ceo, divers, q̃r avoyent ſue daver benefit de certain
Penal leys, fuer̃ ſur ceſt reſolution deny. Et le certificate de
touts les Juſtices Dengleterre concernant tiels graunts de penal
leys & ſtatutes fuit en ceux pois. May it pleaſe your Lordſhips,
we have (as we are required by your honourable Letters of the
21 of *Oct.* laſt) conferred and conſidered amongſt our ſelves (cal-
ling to us his Majeſties Counſel learned) of ſuch matters as were
thereby referred unto us, and have thereupon with one conſent re-
ſolved for Law and conveniency as followeth. Firſt, That the pro-
ſecution and execution of any penal Statute cannot be granted to
any, for that the Act being made by the policy and wiſdom of
the Parliament, for the general good of the whole Realm, and of
truſt committed to the King, as to the head of Juſtice, and of the
weal publick, the ſame cannot by Law be transferred over to any
Subject; neither can any penal Statute be proſecuted, or executed,
by his Majeſties grant, in other manner or order of proceeding,
than by the Act it ſelf is provided and preſcribed: Neither do we
find any ſuch grants to any in former Agres: And of late years,
upon doubt conceived, that penal Laws might be ſought to be
granted over, ſome Parliaments have forborn to give forfeitures
to the Crown, and have diſpoſed thereof to the relief of the
Poor, and other charitable uſes, which cannot be granted or im-
ployed otherwiſe. We are alſo of Opinion, That it is inconveni- Cr. Arg. 109.
ent, that the forfeitures upon penal Laws, or others of like nature
ſhould be granted to any, before the ſame be recovered or veſted
in his Majeſty by due and lawful proceeding: for that in our ex-
peri-

perience it maketh the more violent and undue proceeding againſt the Subject, to the Scandal of Juſtice, and the offence of many. But if by the induſtry or diligence of any there accrueth any benefit to his Majeſty, after the Recovery, ſuch have been rewarded out of the ſame, at the Kings good pleaſure, &c. Dated 8 Novembris 1604. Et a ceſt Letter touts les Juſtices Dengleterre ſubſcribe lour mains.

Mich'

Michaelis, 5 Regis *JACOBI.*

Lillingſton's Caſe.

JOhn Duncumb port action de Det vs Thomas Lillingſton (que commence en Common Bank, Paſchæ 4 Jac. Rot. 704.) pur 195 l. & coſt, q̃ un Fauſtin Dixwel & Mary ſa feme fuer ſeiſie del Rectory de Lillingſton & in Com' Bedf. en fee, & Mich. 31 El. leviont ent un fin al Papworth & Chambers, & al heirs de Papworth, q̃ graunt & rend un rent charge de 30 l. hors del dit Rectory al dit Fauſtine pur ſon vie, a cõmenc puis le mort de Mary ſa feme, le rent annuelm̃t dec̃ pay al feaſts de S. Mich. l'Archang' & l'Annunciac̃: Proviſo ſemper, q̃d præd' conceſſio præd' annualis reddit' 30 l. non aliqualit' ſe extendat ad onerand' perſonas dict' Papworth & Chambers, ſed tantummodo ad onerand' dict' Rect' tota vita ipſius Fauſtini; & rend le dit Rectory al Fauſtine & Mary duc̃ le vie del Mary, le remaind al Tho' Lillingſton & Mary ſa feme en tail, le rem̃ al dc̃t hes de Lillingſton, 2 Oct. an' 33 El. le dit Fauſtine, devãt Sir Chr. Wray chief Juſtice, conuſt un recognizance de 500 l. en nature dun Stat ſtaple, ſolonq̃ le Stat de 23 H. 8. al Duncumb ore Pl', 20 Aug. 39 El. Mary le feme de Fauſtine morust, puis que mort Lillingſton & Mary ſa feme ent en le dit Rectory, & fuer ent ſeiſie en tail ove le rem̃ en fee al Lillingſton. Le dit Fauſt' 15 Apr. 40 El. p ſon fait releaſe al dit Lillingſton & ſes hẽes le dit rent de 30 l. p aſſ: Le Pl' 21 Apr. 40 El. fuit hors del Chanc̃ Certior' al clerk des ſtatutes, &c. ſur q̃ le dit recongniſs en nature dun Stat fuer certifie, & ſua extent, p q̃ le dit rent fuit extend, & ſur Liberate deliv al Pl', & le Pl' pur 6 ans & di. finit al feaſt de S. Mich. Arch' ann' 2 Jac. port acc̃ de Det vs Lillingſton, q̃ tout ceſt tẽps fuit ſeiſt del terre, & ajor le vie del Fauſtine. Sur tout ceſt caſe deux queſtions fuer move. ℭ 1. Si ceſt rent de 30 l. per an, eſteant

4 Leon. 235, 239.

32 H. 8 cap. 6.

extinct p̄ le dit releaſe, eyt tiel eſſence q̄ſt al Plaintiff le conuſée, que ceo poit eſtre extend & deliver al Pl'. C. 2. Admittant q̄ ceo poit eſtre extend & deliver al Plaintiff, ſi le Pl' cõe ceſt caſe eſt poit maintener act̄ de Det. Quant al primer fuit object, que ceſt Recognizance eſt en nature dun Stak ſtaple, & l'eſtatute de 27 Ed. 3. cap. 9. a que l'eſtatute de 23 H 8. cap. 6. refert, done power aux Majors des ſtaples a prender Recognizance des dets, &c. & que, ſur certificat de tiel Recognizance en le Chancery, ſoit bꝛe maund de prender le corps des dits debtors ſans les mitter al mainprize, & de ſeiser lour terres & tenemts, biens & chateur, & ſoit le bꝛief retorn en le Chancery ove la certification del value des dits terres & tenements, biens & chateur, & ſur ceo ſoit execution fait de jour en jour, en meſme le manner cõe eſt contenus en l'eſtatute Merchant. Sur queux parols fuit urge, que rent extinct devant execution fue ne fuit deins les dits pols, ſ. de ſeiſer les terres & tenemts des dits debtors: Car al temps del execution fue le debtor nad le rent, mes ceo fuit tout oustermt extinct & ale p̄ le dit releaſe. 2. Le bꝛief d'Extent ad tendendum omnia terras & catalla ipſius Fauſtini, & in manus dictæ nuper Reginæ ſeiſiri faceret, ut ea præfat' Johanni liberari faciat, & emãt q̄ le rent fuit extinct devant le dit bꝛief d'Extent, ceo neſt in eſſe, ou deſtre extend, ou deſt̄ p̄ſe en le main le Roy, ou deſt̄ deliv̄ al Pl'. 3. Sect̄ encont̄ reaſon, que le franktenem̄t del rẽt eſtrãt extinct, le Pl' aꝑa execution de ceo, & p̄ ceo dam̄ ſoyſe chattel: Et l'opinion in 3 & 4 Ph. & Mar. (a) Dyer fo. ſuit cite, ou l'opinion eſt, que rent extinct ne poit eſtre extend, &c. A q̄ fuit reſpond & reſolve, que a aſcun purpoſes p̄ le common ley rent extinct ſert̄ dit in eſſe, (b) q̄ſt al eſtrang': Et pur c̄ ſi le bar̄ ſeiſie dun rent en fee releaſe le rent al tenãt de terre, & puis le baron morust, ore le femm ꝑt̄ (c) endow de ceſt rent iſſint extinct & aꝑa bꝛe de Dower; les pols de quel bꝛief ſont, Præcipe A. quod juſte reddat B. tertiam partem trigint' libr' redditus: Et bꝛe de Dower unde nihil habet eſt, Præc' A. quod juſte reddat B. &c. rationabilẽ dote ſuam quæ ei contingit de libero tenemento qd' fuit, &c. & il aꝑa grand Cape, ou petit Cape, come ſon caſe require, de prender le rent en le main le Roy: Car quoad petentem, ceo eſt in eſſe, cõm̄ q̄ en dꝛit le rẽt eſt extinct. Et vide en le Sr̄ Aburgav' Caſe, fo (d) 78. en le 6 part de mes Reports, pluſors caſes, ou choſe extinct ꝑt̄ dit in eſſe, (e) pur le benefit dun eſtranger. 2. Fuit obſerve, q̄ le dit Act de (f) 23 H. 8. cap. 6. (p̄ force de q̄ le dit Recognizance en le caſe al barr fuit p̄ſe) pur l'execution, refert al Statute Staple, & l'eſtatute Staple, ſ. le dit Act de 27 E. 3. refert al Statute Merchant

(a) Dyer 205. pl. 7. Apres 38. b.

(b) 4 Leon. 235, 239. 1 Jones 62. 2 Roll. 471. Hob 165.

(c) 6 Co. 79. a. Co. Lit. 32. a.

(d) 6 Co. 79. a.

(e) 1 Jones 62.

(f) 3 Co. 12. a.

chant de Anno 13(a)Ed. 1. les parols de q̄l Statute ſont(Et quāt les terres del dettors ſoyent liure au merchants, eit il ſeiſin de touts terres q̄ux fuer' en le main de dettor, le jour de la Recognizance fait, en q̄ mains q̄ ils ſont apres devenus per feoffment, ou auter manner)vonqs maintenāt p̄ le recognizance conus, le rent fuit lie, & ſerr̄ extendū p̄ le erp̄ſſe purview del ſtatute, en quecunq; mains q̄ ceo devtendra: Et nient pluis q̄ apres execution ewe p̄ le conuſée, le releaſe de Fauſtin notera, nient pluis ſerr̄ ceo devant execution; car le rent fuit lie al execution maintenāt p̄ le Recognizance conus. Iſſint ſi home ad judgm̄t a recou̇ det ou damages, p̄ ceo le rent q̄ il ad vaſcun eſtate de franktenem̄t eſt liable a ceo; & pur ceo, com̄t q̄ apres judgm̄t il releaſe ceo, le Pl̄ avera execution vun moity p̄ Elegit, q̄ eſt done p̄ Leſtat de Weſtm' 2. cap. 18. les pols de q̄l ſtatute ſont, Liberent ei medietatem terræ debitoris, q̄l p̄ conſtruction del ley eſt de tout q̄ il ad al temps del judgm̄t done, ou a aſcun temps puis. Et en le Caſe de Chenie en le Court de Gards, An' 27 Eliz. fuit reſolve, q̄ ou ceſty en reu̇ſion infeoff leſſée pur ans al uſe des auters, q̄ com̄t q̄ le leaſe ſerr̄ ſurrender & extinct p̄ le cōmon ley, uncore p̄ le(b) ſaving del ſtatute de 27 H. 8. des Uſes, le term del feoffée fuit ſave. Aury en meſm̄ le Court, An' 28 Eliz. en le caſe vun Iſed, fuit reſolve, q̄ ou le Sr̄ enfeoff le Coppyholder al uſe des auter, q̄ le coppyhold eſtate per le ſaving del dit Act fuit p̄ſerve. Iſſint en le caſe al bark, p̄ l'Act de Mercatoribus tout le terr̄ (q̄ include touts hereditam̄ts extendable) q̄ le dettor avoit al jour del recognizance conus ſerra deliver, q̄l Act p̄ſerve le rent deſte in eſſe q̄m̄t al execuc̄ del conuſée. Et le caſe en 21(c)E. 3. 18. b. & Fitz. Nat. (d)Br. 223. e, ſi Sr̄ & tm̄ Abbot fuit, & le Seignior releaſe al Abbot ſon Seigniory, ceo eſt mortmain p̄ Leſtatute de Religioſis, & le Sr̄ paramoūt avēa ceo p̄ force del dit Act, & uncore les parols del Act ſont, dom' feodi talitèr alienati avēa ceo, & p̄ releaſe ceo eſt extinct, & uncore q̄m̄t al Seignior paramount, ceo eſt p̄ conſtruction del Act in eſſe, & il avera ceo. 3. Serra dure, que le conuſor p̄ ſon act demeſm̄ barrera le conuſée, q̄ eſt eſtraunger al releas, de ſon execuc̄ del rent, q̄ peradventure fuit un p̄incipal cauſe de p̄iſel del dit Recognizance, vaū execution de ceo: Et eſt pluis reaſon a reliever le conuſée, en q̄ nul default ou laches fuit, q̄ le fre tenant, q̄ ne doit eſſe miſconuſant de tiels charges de record. 4. Cheſcun execution ad en judgment del ley, relation & retroſpect al (e)judgm̄t, come appiert en Shelley's Caſe, en le 1 part de mes Reports. Et le dit caſe de Dower, & le graūd Cape & pet̄ Cape ſur ceo, & Leſtatute de Mercatoribus, q̄ lia tout le fre de conuſor

(a) 3 Co. 12. a.

(b) Moor 196. 2 And. 192, 193. Winch. 106, 109, 117. O. Bendl. 57. Devant 19. b. 20. a. Raymond 148.

(c) Fitz. Mortm. 12.
(d) 3 Co 31. a. F.N.B. 223. i.

(e) 1 Co. 94. b. 106. b. 10 Co. 38. a.

que il ad jour de Recognizance comus, en quelconq; mains icest bien dra, dont plein & ſufficient rēs a touts les dits objections: & l'opinion fuit Serjeant Obiect, en 3(a) & 4 Ph. & Mar. fuit tout ouſterint dehy. Quant al 2 point fuit reſolve per totam Curiam, que l'action de Det (b) ne giſt cy long come l'extent endure, car cy long ad le rent continuance, come q̄ le franktenement de ceo ſoit determine. Et tout ceo, quant a ceſt point, que fuit reſolve en Ognel's Caſe en le 4 part de mes Reports fol. 49. fuit affirm deſire bon ley, & 9 H. 7. 17. a. q̄ ſi Seignior graūt ſon Seigniory pur ans, le grantee durant les ans navera action de Det. Et fuit aury reſolve, q̄ coment q̄ ſoit expreſs(c) pur ſo, q̄ le plon ne ſerr charge en bre d'Annuity, unc en tiel caſe aps l'annuity ou rent determin le plon del cre tenant ſra charge en det pur les arrerages, pur ceo q̄ l'annuity eſt determine, & il ad nul autre remedy, come ad ten⁹ en Ognel's Caſe & 6 Eliz. Dy. (d) 227. la cite. Fuit auſy reſolve, q̄ ſi home graunt rent charge pur vie hors de ſon cre, & le rent eſt arere, & le grantor enfeoff A. & le rent eſt arere en ſon tēps, & puis A. enfeoff B. & le rent eſt arere en ſon temps, & puis le graunte mourſt, ſes executors averont act̄ de Det pur les chefes de eux, pur le rent (e) arere en ſon temps, cat (f) Qui ſentit commodum ſentire debet & onus, come eſt auſy tenus en Ognel's Caſe.

(a) Devant 37. b. Dyer 205. pl. 7.

1 Roll. 596.

(c) 6 Co. 41. b.

(b) Co. Lit. 146. b. 6 Co. 41. b.

(d) 227. la cite.

(e) 4 Co. 49. b. Co. Lit. 162. b.

(f) 1 Co. 99. a. 5 Co. 24. b. 100. a. Co. Lit. 211. a. 2 Inſt. 489. Cart. 142. 3 Keb. 592. Plowd. 249.

Mich.

Michaelis, 5 JACOBI.

Bedel's Caſe.

HIll. 1 Jac. Rot. 375. en Bank le Roy ent̄ Eliz. Bedel pl' en Det, & Michael (a) Bedel Def. le caſe fuit tiel: Robert Bedel ſeiſie dun meſuage, &c. en Iver & Langley in Com' Buck' en fee, p̄ la feme le dit Eliz. ad iſſue 3 fits: James fuit le 2 fits, & Mich' le Def. le 3. le dit Robert p̄ Indenture triparty ent̄ luy & ſa feme del 1 part, le dit James ſon 2 fits del 2 part, & le dit Mich' ſon 3 fits del 3 part, en conſideration del natural affection & paternal amour, q̄ il ad al dits James & Michael, & pur lour mieilor preferment & advancement, & al entent que les dits tenements continuer̄ en ſon noſme & ſanke, covenant p̄ le dit Indenture, q̄ il & ſes heirs eſtoier̄ ſeiſie des dits tenemts, al uſe de luy meſme pur vie, & apres ſon deceaſe al uſe del dit Elizabeth ſa feme pur vie, & puis lour deceaſes, dun moity al uſe del dit James en tail, & dauter moity al uſe del dit Mich' en tail, &c. & puis Robert morust; & tout ceſt matter fuit trove p̄ eſpecial verdict. Et le ſole queſtion fuit, ſi (come ceſt caſe eſt) aſcun uſe ſurō al Eliz. ſa feme ou nemy. Et fuit object, que la feme ne fuit deins les conſiderations, q̄ fuer̄ exp̄reſſe en le Indenture, & nul auter conſideration poit eſte aver̄, q̄ eſt contein en le fait, car tout le ſubſtance del agreem̄t des parties fuit refert al fait, & tout covient appier en ceo, & riens eſt relincq̄ al parol ou aver-m̄t des parties. A q̄ fuit reſpond & reſolve, que conſideration q̄ eſtoit ove le fait & nemy repugnant a ceo poit eſte bien (b) aver̄, cōe eſt adjudge 3 & 4 P. & M. Dyer 146. en (c) Viller's Caſe, q̄l Vide en le prim' part de mes Reports en Mildmay's Caſe, fo. 176. a. 2. Admittant, q̄ auk conſiderac̄ q̄ eſt exp̄reſſe en le fait ne poet eſte averr, uncor en ceſt caſe la eſt exp̄reſſe conſideration, car q̄m̄ il limit ceo al uſe de ſa feme pur term de ſa vie, ceo impor ſuffic̄ conſideration en luy m̄, & ne beſoigne aſcū aver̄m̄t, car (e) Manifeſta probatione

(a) 2 Roll. 782, 785. 11 Co. 24. b. 25 a. Jenk. Cent. 289. 1 Jones 419. 2 Jones 105. March 50, 51.
(b) 2 Roll. 790. 1 Co. 176. a. 2 Co. 76. a. 5 Co. 26. a. b. 68. b. 9 Co. 10. a. b. 11 Co. 25. a. Cr. Jac. 29. 1 Roll. Rep. 42. 2 Roll. Rep. 362, 363. Lane 119. 1 And. 313. 1 Brownl. 191. Moor 192. Dy. 147. pl. 72, 73. 1 Ventr. 368.
(c) 4 Co. 3. b. 11 Co. 25. a. 2 And. 47. N. Benl. 39. Benl. in Kelw. 208. 2 Roll. 781. 2 Roll. Rep. 68. 2 Inſt. 672. Ow. 33. Raym. 47, 50. Cart. 140. Palm 214, 215, 506, 507 Moor 93, 505.
(d) 11 Co. 24. b. 25. a 2 Roll. 782, 785. Jenk. Cent. 289. Cro. Jac. 168, 624, 625.
(e) 11 Co. 25. a.

(a)8 Co.126.b. 9 Co.54.b. Dost.pla.86. Br.Mortdancestor 8.

probatione non indigent, come en 13 H.4 17.a. ou Lestat de W. 1. c.38. oyetm, q̄ le bre de Ass. de Mortdaunc' eiet le term de limitac̄ del coronm̄t le Roy Henry le third, la est tenus, q̄ si enfant poyt Ass. de Mortdaunc' de possession son pier ou mer, ne (a)besoigne dalleger q̄ ceo fuit puis le coronm̄t le Roy H.3. car ces appiert. Issint, si le pier t̄nt p̄ service de Chr̄ enfeoff son fits & hre appat deins age, ne besoigne dayrer ceo deste (b)collusion, car ceo est apparāt, Wimbish's Case Pl.Com. & 27 H 8. Dacre's Case, 33 H.6.14. 3 H.6.32. & quædam tacita habentur pro expressis. Issint si jeo covenāt, q̄ en consideration de paternal amour & affection a mon eigne fits, a estoier seisie al use de mon eigne fits pur vie, ou en tail, & puis al use de mon 2 fits en tail, & puis al use dun tiel mō cosin en fee, comt q̄ le cōsideracō expūse en pois respect saiebit leigne fits, unc̄ le consideracō apparāt, en le fait, en limiting le use a mō 2 fits, ou mō cosin, est sufficient en ley a raiser use. Issint si jeo covenant a estoier seisie al use de mon terme fits, (c)ou cosin, ceo hūt raiser un use sans aucun expresse pois de consideracion; car sufficient consideration appiert, & paternal amour & affection appiert. Mes si le pier p̄ fait indent, en consideration de 100 l. pay p̄ son fits, covenant a estoier seisie al use de son fits, le nul use ert raise al fits, sinō q̄ le fait soit inroll, p̄ Lestat de 27 (d)H.8.c.10. car ceo est en nature dun bargain & sale, & la (e) Expressum facit cessare tacitum. Et puis sur ceo judgm̄t use & error en mesme cestuy term fuit port sur le novel (g) statute, & p̄ touts les Justices del Common Bank, & les Barons del Eschequer judgm̄t fuit affirm. Quod nota bene.

(b)Plowd.49.b.

(c)1 Roll.Rep.62. Plowd.304.a. 1 And. 79. Cro.Jac.624. Cro.Car.530. 8 Co.94.a. 1 Jones 419.

(d)27 H.8.cap.10. * 8 Co.94.a. 11 Co.24.b.25.a. 1 Ventr.138. Cart.138,146. Palm.214,215. Winch.59,60.

(e)Co.Lit.183.b. 5 Co.97.a. 11 Co.24.b. Godb.449. Latch.265. Raymond 46. Cart.146.

(g)27 E.cap.1.

Mich.

Michaelis 5 JACOBI.

Beresford's Case.

IN Court de Garde ent James Beresford relator, & Thomas Beresford, & autres Defendants le case fuit tiel. Aden Beresford estreat seisie des Manors de Pennibeordy, Bircham, & autres terres en Sr, & son fait 14 Junij 40 Eliz. enfeoff William Fleetwood & autres en Sr. al uses de certain Indentures port date 20 Novemb. 34 Eliz. s. al use del Aden le pier, for term of his life, and after his decease, to the use of George Beresford, Son and Heir apparent of the said *Aden*, and the Heirs Males of his Body lawfully begotten; and for default of such issue, to the use of *Aden Beresford*, Son of *James Beresford*, and of the Heirs Males of the said *Aden*, Son of the said *James*, lawfully begotten; and for default of such issue, to the use of the Heirs Males of the Body of the said *James Beresford* lawfully begotten; and for default of such issue, to the use of *Thomas Beresford*, third Son of the said *Aden*, and of the Heirs Males of the Body of the said *Thomas* lawfully begotten; and for default of such issue, to the use of *Humfrey Beresford*, fourth Son of the said *Aden*, and of the Heirs Males of his Body lawfully begotten, with divers remainders over, and with remainder to the Heirs Females of the Body of George, and so of *Aden*, the Son of *James* lawfully begotten, &c. with the remainder to the right Heirs of *Aden* the Father for ever. Et le sole question del case fuit, que estate Aden le fits de James avoit. Et cest case fuit deux foits argue devant les deux chief Justices, le chief Baron al Serjeants Inn. Et fuit object, que Aden le fits de James navoit fee tail mes fee simple, car le limitation a luy est, to the use of *Aden* and of the Heirs of the said *Aden* lawfully begotten, & icy sount ceux parols (of the Body) of the said *Aden*, issint que oye le limitation nest que en effect forsque to the use of *Aden*, and of the Heirs Males of the said *Aden*,

Cr. Jac. 448, 591. 2 Rolls Rep. 196. 217. Lit. Rep. 320. 347. Hutt. 85.

Aden, car ceux ſubſequēt parols, lawfully begotten, ſont imply, car cheſcun heir covient eſtre loyalment engendr̄; & limitatiō a un & a ſes heirs males, eſt ſans queſtion un Fée-ſimple. Et un
(a) Moor 424. Lit. Rep. 287. 347. Cr. El. 478. Hutt. 86.
judgm̄t en Bank le Roy inſ (a) Abraham & Trigg Hill 38 El. Rot. 739. fuit forcém̄t urge, ou feoffm̄t fuit fait al uſes de certain Indentures (come ceſt caſe eſt) ou un limitation fuit, ad opus & uſum Gabrielis Dormer & hæred' maſculor' ſuor' legitimè procreator', & p defectu talis exitus, al uſe de dīꝭ auters en tail en remainder; & ſur argument al barr & al bench fuit adjudge q̄ Gabriel ad un Fée-ſimple, car neſt limit de quel corps les heirs males ſerr̄ ingendrés, mes ſon intent fuit, quod ſinguli hæredes ſui maſculi inherit̄, q̄l entent ne eſtoit ove le rule del ley, & com̄t q̄ rem̄ ſont limit ouſter, q̄ ne potent eſtre ſur Fée-ſimple, uncore ceo ne poit encounter le rule del ley, fair parols de Fée-ſimple deſtr̄ condūt a un eſtate tail: Et ils cōcludont ove Lit. fol. 6. b. q̄ le reaſon pur quoy, quār tres ſont dōes a un & a ſes heirs males ou females, eſt Fée-ſimple, eſt, pur ceo q̄ neſt my limit p le done de (b) q̄l corps iſſue male ou female iſſuera; & iſſint ne poit en
(b) Lit. Sect. 31. Co. Lit. 27. a.
aſcun maner eſtre priſe p equity del ſtat̄ de donis conditionalib⁹ pur ceo c̄ eſt Fée-ſimple. Iſſint en le caſe al barr: & ove ceo accord le liure in 8 E. 3. 49. ou tres fuer̄ dones a un & hæred' ſuis legitimis, ceo eſt Fée-ſimple, q̄ eſt tout un ove limitation a un & hæred' ſuis legitimè procreatis. Mes fuit reſpond & reſolve p les dits chief Juſtices & chief Baron, q̄ le dit Aden fits del dit J. avoit un eſtate (c) tail, p q̄ touts les rem̄ ouſter fuer̄ loyalment deſſue:
(c) Hutt. 85. Cr. Jac. 448. 591. 2 Siderf. 42.
car fuit agreé, q̄ a un eſtate en tail eſt requiſite en touts dōes & limitatiō des uſes, q̄ les heirs ſoyent limit deſtre procreat̄ ou engendre daſcun corps en certain, ou p expreſſe pols, ou pols que tant (d) amount, car ceux precise pols (de corpore) ne ſont neceſſary al creation dun eſtate en tail, cy long q̄ ſont pols q̄ tant amount, come en (e) 5 H. 5. 6. a. b. ou le dōe fuit Dedi unum meſſ. R. & K. uxori ejus & hæred' eorum & aliis hæred' dict' R. ſi dict' hæred' de R. & K. exeuntes obierint ſine hæred' de ſe: In ceſt cas ceux pols (de corpore) ſont amiſe, & uncore adjudge bon eſtate tail, car ſont pols q̄ tant amount, car le done en effect eſt al barō & femes & al heir del barō & feme iſſuants, ou de dit R & K. exeunt', ou hæred' de ſe, & tout ceo eſt p force de ceſt prepoſition (de) & (iſſuants). Et en (f) 12 H. 4. tit. Brē fres fuit done a un & hæred' quos ſibi contigerit de uxore ſua, icy fault pols de corpore, unt̄ pur ceo q̄ ceo tant amount ceo eſt adjudge un eſtate tail: Et
(d) Lit. Rep. 6. 2 Siderf. 73. Cr. El. 40. Co. Lit. 27. b.
(e) Perk. Sect. 169. 2 Rolls Rep. 196. Lit. Rep. 260, 320 Bridgman 2. Br. tail 12. Br. eſtates 62. Fitz. tail 11. Co. Lit. 20. b. 1 Bulſtr. 222.
(f) Cr. Jac. 591. Co. Lit. 20. b.
3 E. 3. tit. Brief 743 (g) terre eſt done a un & hæred' ſuis de prima uxore ſua, ceo eſt bō eſtat̄ tail. Et fuit reſolve, q̄ ſi fres ſōt done a
(g) Co. Lit. 20. b.
un

un, & hæredibus de ſe exeuntibus, q̃ ceo eſt bon eſtate tail: Et en ceux caſes le principal cauſe eſt p̃ force de ceſt prepoſition (de.) Et diõs auters caſes fuer̃ miſe, p̃ q̃ fuit conclude, q̃ ou parols (de corpore) ou q̃ tant amount, ſont requiſite al creatiõ dun eſtate tail. Et fuit reſolve, q̃ in le caſe al barr la fuer̃ parols q̃ tant amount, car p̃ fact de donis conditionalibus, voluntas donatoris in carta doni ſui manifeſtè expreſſa de cætero obſervetur, & pur ceo en ceſt caſe tiel conſtructiõ ſ̃t fait, q̃ pouoit 3 effects: 1. A eſtoier ove rule del ley: 2. ove lentent del donor: 3. q̃ touts les p̃ts del Indentur̃ poiẽt eſtoier: & pur ceo tranſlate le dit limitatiõ al Aden en Latin, & dõqs le limitation eſt, ad uſum Adeni & hæred' maſculor' de dicto Adeno legitimè procreator', ou, & hæred' maſculor' legitimè procreator' de dicto Adeno, & ceo tant amount cõe il ad dit p̃ dict' Adenum legitimè procreat': car tout eſt un en eſſect. Car caſt pol (de) ou (ex) accouple ove pol ſubſequent (procreat') appropriate les heirs males deſcẽd del corps de Aden: Car de Adeno, ou ex Adeno, & de corpore Adeni ſont tout un. Et ceo eſt directiſſ̃t prove p̃ le jugmẽt en le dit caſe de (a) 5 H. 5. 6. ab. car la fuit (de) & (exeunt') & icy eſt (de) & (procreat') q̃ ſont tout & un effect. & en le dit caſe de Abraham (b) & Trigg (de) fuit. Et affit a ceo fuit object, q̃ limitation en Latin poit bien eſtre, ad uſum dicti Adeni, & hæred' maſculor' dicti Adeni (en le genitive caſe) legitimè procreat', & nemy de dicto Adeno, ou ſi le limitation ne ſoit certain pur fait eſtate tail, ſont pois effects certain pur fait eſtate en fee. A que fuit reſpondu & reſolve: 1. covient eſtre de dicto Adeno, car autrement ceo ſera encont̃ entẽt del donor, & touts les reſt̃ ſuſter ſera void, & touts ſoits tiel (c) conſtruction covient eſtre fait, que touts les p̃ts del fait poient eſtoier enſembl', ſi ceo poit eſtoier ove le rule del ley: 2. le ſubſequent clauſe eſt, and for default of ſuch iſſue, & iſſue ne poit eſtre del Aden, ſinon q̃ les parols ſont de dicto Adeno; & pur ceo un clauſe eſt bien explain per lauter: & ſolonq̃ ceſt reſolution le caſe fuit decreé accord̃. Vide (d) 35 Aſſ. pla. 14. (e) 37 Aſſ. pl. 14. (f) 39 Aſſ. pla. 20. 24. Ed. 3. 28. 18 Ed. 2. brief 836.

(a) Cr. Jac. 591. a. Perk. Sect. 169. Devant 40. b. 2 Rolls Rep. 196. Lit. Rep. 260. 320. Bridgman 2. Br. ——12. Br. eſtates 62. Fitz. tail 11. Co. Lit. 20. b. 1 Bulſtr. 222.
(b) Moor 424. Devant 40. b. Lit. Rep. 287. 347. Cr. El. 478. Hutt. 86.
(c) Wing max. 238.
(d) Fitz. tail. 17. Br. eſtates 36. Br. tail 20.
(e) 1 Rolls 838. Perk. Sect. 171. Cr. Jac. 591. 37 Aſſ. pl. 15. Br. eſtates 61. Br. tail. 21.
(f) 39 Aſſ. pl. 20. Br. eſtates 38. Br. tail 23. Fitz. tail 19. Co. Lit. 20. b. 22. a. Cr. El. 153. 313. Owen 148. 1 Ventr. 228. Palm. 33.

Mich.

Michaelis 4 JACOBI.

Kenne's Caſe.

Cr. Jac. 186. Jenk. Cent. 289. 1 Rolls 360.

EN le Court de Gards inter Thomas Robertſon & Elizabeth ſa feme Pl', & Florence Lady Stallenge Def. le caſe fuit tiel. Chriſtopher Kenn armiger fuit ſeiſi del Manor de Kenn en le County de Somerſet, tenus per ſervice de Chivaler in capite, & 37 H. 8. de facto p̄iſt al feme Elizabeth Stowel, & puis le dit Elizabeth Stowel ad iſſue Martha mere del Elizabeth un des or̄ Pl', & puis 1 & 2 Ph. & Ma. en le Court de Audience, int̄ le dit Chriſtopher Kenn Pl' & Elizabeth Stowel Def. le Judge la done ſentence en ceux parols. Prætenſ. tractat', contract', ſponſalia, & matrimoniū, quin verius effigiem matrimonij inter Chriſtoph Kenn & Eliz Stowel in minore & ſua impubertatis ætate eorundum aut eorum alterius de fact', habit', contract', & celebrat' fuiſſe & eſſe, eoſdēq; Chriſtopherum & Eliz. tam tempore contractus & ſolemnizationis dict' prætenſ. matrimonij, quam etiam continuò poſtea eidē matrimonio p̄tenſ. & ſolemnizationi ejuſdem, diſſenſiſſe, contraveniſſe, reclamaſſe, & reluctaſſe, ac eo prætextu hujuſmodi prætenſ. tractat', contract', ſponſalia, & matrimonium de jure nullum & nulla, irritum & irrita, caſſum & caſſa, invalidum & invalida, & minus efficax & inefficacia, fuiſſe & eſſe, viribuſq; juris caruiſſe, carere, & carere debere; necnon antedictos Chriſtopherum Kenn & Elizabeth' Stowell, quatenus de facto fuer̄ ad invicem matrimoñ ut prædicitur copulat', ab invicem ſeperand' & divorciand' fore debere pronunciamus, decernimus, & declaramus, eoſque ſeperamus & divorciamus, eiſdemque Chriſtophero & Elizabeth' licentiam & libertarem ad alia vota convolanda concedimus, tribuimus, & impertimur p̄ hanc ſentēt̄iam nr̄am definitivam, ſive hoc finale noſtrum decretum, quam ſive quod ferimus & promulgamus in hiis ſcriptis, &c. Et puis le dit divorce, le dit Chriſtopher Kenn eſpouſe & p̄iſt al feme Elizabeth Beckwith, & puis Anno 5 Eliz. devant divers Commiſſioners Eccleſiaſtical,

aſtical le dit Eliz. Beckwith libel vers le dit Chriſtopher Kenn, q̄ il (devant le marriage int̄ eux contract) ad marry ove le dit E. Stowel, ſur q̄ pces fuit agard vers le dit Eliz. p̄ intereſſe, & ſur due examination del cauſe fuit ſentence, q̄ le marriage int̄ le dit Chriſtop. Kenn & Eliz. Beckwith fuit loyal, & ſentence eux ad exequenda conjugalia obſequia &c. & q̄ le dit Chriſtoph. Kenn ne unq̄s fuit loyalm̄t eſpouſe al dit Eliz. Stowel, & puis le dit Eliz. Beckwith mourſt; apres q̄ mort le dit Ch. Kenn prift al feme le dit Florence p q̄ il ad iſſue un file Eliz. & mourſt; & Anno 36 Eliz. fuit trove p office en le County de Somerſ. p force dun Mandam⁹ aps le mort del dit Ch. Kenn, q̄ le dit Eliz. Kenn fuit ſa file & heir, & q̄ el fuit deins age, s̄, al age de 10 moys, le gard & cuſtody de q̄ le Roign grant a Sir Nic. Stallenge & le dit Florence adonq̄s ſa feme. Sur q̄ le dit Martha, p̄tend̄ luy meſm̄ deſtre file & heir del dit Ch. Kenn, ou ſon baron Silveſter Williams exhibit lour bill en le Court de gards vers les dits Sir Nicholas & Florence ſurmittant, q̄ le dit Martha fuit file & heir del dit Ch. Kenn del corps del Eliz. Stowel ſon loyal feme (come el pretend) allegeant, q̄ ils al temps de lour Marriage in Anno 37 H. 8. fuer̄ ambideux de eur ouſter-lage de cōſent, & q̄ ils cohabite enſemble 9 ou 10 ans devant le dit ſuppoſed divorce, durant q̄l cohabitation le dit Martha fuit p̄create inter eux, & prient licence, q̄ le dit Silveſter & Martha poient travs le dit office. A q̄ les dits Sir Nicholas & Florence reſpond̄; & les Pl̄ examin divers teſtimoignes, & devant publication Sir Nicholas mourſt, & ſur ceo le dit & Silveſter Martha exhibit Bill de reviver vers le dit Florence, & puis Martha ayant iſſue Eliz. feme ore Pl̄ mourſt, puis quel mort les dits Tho. Robertſon & Eliz. ſa feme port̄ novel bill de reviver, a reviver le primer fuit, en q̄ les teſtimoignes fuer̄ examin. Et ceſt caſe fuit refert̄ al Fleming & Coke chief Juſtices, & al Tanfield chief Baron, & al Yelverton & Williams Juſtices, Snig & Altham Barons del Exchequer. Et en ceſt caſe 3 queſtiōs fuer̄ move. ¶ 1. Si enconter le dit primer divorce les Pl̄ ſerrōt receive, cy long come ceo remain en force, daverrer q̄ ils agreōt & conſent al marriage, ou que ils ſerra conclude p le dit divorce. ¶ Le 2 queſtion fuit, ſi ils aver̄ travers al dit office devāt office trove pur eux. ¶ 3. Sils aver̄ bill de reviv̄ ſur un bill de reviv̄, come ceſt caſe eſt. Et les Juſtices oyent pluſors arguments devāt eux a ſeveral jours, & en ſeveral Terms al Serjeants Inn. Et quāt al primer fuit object. q̄ appiert p Lit. lib. 2. fol. 22. & p leſtat de Merton c. 6. & 35 H. 6. fol. 40. b. &c. q̄ le comon ley & Parliaments avoier̄ prife notice del age de cōſent de male deſtre (a) 14 & de female

(a) Lit. Sect. 104. Co. Lit. 79. a. b. 2 Inſt. 90.

male deſtre 12. & pur ceo, ceo eſt triable per le comon ley; & ſi en verity le baron & feme ſont del age de conſent al temps de le eſpouſels, nul divorce apres, pendant q̄ ils fuer deins age de cõſent, concludera les parties ou lour heirs mes q̄ ils poient prover le contrary al comon ley, & principalm̄t en le caſe al barr, pur ceo q̄ ceo concern inheritance & le voier diſcent de ceo: & ſententia contra matrimonium nunquã tranſit in rem judicatam. 2. Admittant q̄ ils fuer deins age, & puis age de cõſẽt ils aſſent ou cohabit, & ount iſſue, comt̄ q̄ divorce pur impuberty & minority des ans ſoit ewe, uncore ceo neſt forſq̄ evidence, & ne cõcluder les parties en aſcun actiõ al comon ley a proch laſſent; car intant q̄ le divorce eſt ewe pur ceſt cauſe, & le cauſe eſt triable p̄ le comon ley, le divorce ne concludera: & 11 H. 7. fol. 27. a. fuit cite, q̄ ceſtuy q̄ plead divorce coviẽt m̄re le cauſe del divorce, & ſi le cauſe ſoit triable al comon ley (come en le caſe al barr ceo eſt) la ceo ne concludera; mes ſi ſoit choſe nient triable al comõ ley come precontract, preſſion, &c. la ceo eſt auterm̄t. Mes quant a ceo fuit reſolve per touts les dits Juſtices & Barons, q̄ le dit ſentence cõcluder cy long come ceo remain en force, & ceo pur diꝰs cauſes.

(a) Cr. Jac. 186. 1. Eccleſiaſtical (a) Judge ad ſentence le cõtract & eſpouſels der void & de nul effect, & comt̄ q̄ ils fuer del age de cõſent, uncore ſi le original contract fuit void & de nul effect, donques la fuit juſt cauſe de divorce: 2. La fuer parols de divorce & ſeperatiõ, eoſdẽ divorciamus & ſeparam⁹, & done a cheſcun de eur liberty ad alia vota convolanda: 3. Si le marriage uſt eſtre infra annos nubiles, eccleſiaſtical Judge eſt judge cibiẽ del aſſer come del primer cõtract, & q̄ ſer ſufficiẽt aſſent & q̄ nõ, & comt̄ q̄ eccleſiaſtical

(b) Jenk. Cent. 289 Judge m̄re (b) cauſe de ſon ſentẽce, uncore intãt q̄ il eſt judge de original matt̄, ſ. del loyalty del matrimony, no⁹ ne unꝰs examiner l' cauſe le q̄l ẽ ſoit voier ou non: car des choſes quor' cogni-

(c) Jenk. Cent. 289. 4 Co. 49. a. 2 Rolls 7. 5 Co. 7. a. *Caudries* Caſe. 8 Co. 135. b. 2 Ventr. 43. Cawly 31. tio cauſæ pertinet ad for' eccleſiaſtic̄, no⁹ dolom⁹ doñ (c) foy a lour ſẽtẽces, cõe ils donõt al judgmẽts en n̄re courts. Aury le rule de lour ley eſt, Qd' maſculi quid' puberes, fœmiñ viri potẽtes matrimonio cõſentire poſſunt: & le determinatiõ de ẽ appẽt a lour cõuſãce. Et q̄ñt al caſe de 11 H. 7. f. 27. a. voier eſt, q̄ le cauſe de divorce eſt der m̄re, pur ceo q̄ aſc̄ divorc diſſolve le matrimõy, ſ. à vinculo matrimõij, baſtard̄ l'iſſue, & barr le femm de dower; & aſcũ à menſa & thoro q̄ ne diſſolve le matrimõy, ne barr la femm de dower, ne baſtard̄, iſſue. Mes en caſe de deprivatiõ le (d) cauſe ne beſoign der m̄re: car

(d) 1 Sider. 71, 251. ſoit ceo a tort ou a droit, ſur cauſe ou cãs cauſe, ceo eſtoit, & cheſcun deprivation diſable & remove le party deprive cibien pur un cauſe come pur auter cy long come le deprivation remain

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en force. Vide 8 Aſſ. 9 (a) E. 4. 24. a. 7 E. 4. (b) 32 a. 3 H. 6. 12 H. 8. 5. Et Coke chief Juſtice cite le caſe en 22 E. 4. tit. Conſultation 5. Corbets Caſe, ou le caſe fuit, q̄ Sir Rob. Corbet avoit p̄ Eliz. ſa feſm̄ 2. fits R. leign & R. le puiſne & mozuſt; R. leign eſteant deins age de 14. ans p̄iſt feſm̄ un Matild, & al plein age demurē̄ enſemble & habuerunt carnalem copulā̄, & cogniti & reputati pro viro & uxore palā̄ & puis le dit R. dim̄it̄ le dit Matild ſa feme ayāt nul iſſue p̄ luy, & eſpouſe un Lettice, &c. vivant le dit Matild, & ad iſſue p̄ luy R. & puis R. q̄ iſſint ad eſpouſe L. mozuſt; & Lettice p̄zeche overtim̄t, q̄ el fuit le loyal feſm̄ de R. & ſon fits mulier, p̄ q̄ le dit Rog. fits le dit Sir Rob Corbet ſuit in Spiritual Court a reȝver ceux eſpouſels ent̄ R. ſon frere & Lettice, & que Lettice ſoit miſe a ſilence, per q̄ Lettice ſuiſt ꝓhibit̄. Et en ceſt caſe 3 points fuer̄ reſolve: 1. Que ſi R. & Matild uſſont ewe iſſue & ount eſtre unjuſtim̄t divoꝛce, & puis R. uſt marry Lettice & ad iſſue & mozuſt, la liſſue de R. & Matild puit aȝ̄ ſuit en Eccleſiaſtical Court pur avoid̄ le divoꝛce; car cy long come le divoꝛce eſtoit en foꝛce (le common ley done cy grād̄ ſoy (c) a ceo) liſſue ne puit aȝ̄ remedy p̄ le common ley. Et nota en le caſe nul cauſe de divoꝛce appiert, mes pur cauſe que le marriage fuit ewe quād̄ les p̄ties fuer̄ infra annos nubiles; & en le dit caſe ȝl divoꝛce liſſue aȝa ſō ſuit a reȝver ceo oꝛiginalim̄t en Court Chriſtien, car le divoꝛce eſt judgim̄t ſpiritual & coviēt eſtre reȝvſe en le Spiritual Court; mes en le caſe de Corbet la eſt nul divoꝛce ne auk̄ ſpiritual judgim̄t q̄ diſable le dit R. & pur ceo il doit oꝛiginalim̄t comence al common ley come heir, & aȝa touts actiōs in tēpoꝛal court come heir & touts benefits cō̄e heir ȝs liſſue de L. nō obſtāt le 2 eſpouſels: car ils ſōt void en touts leys tēpoꝛal & ſpiritual, & laction & oꝛiginal a baſtard̄ aſcū̄ ne ſer̄ move en Spiritual Court oꝛiginalim̄t, quād̄ nul ſentēce ſpiritual diſable luy, mes il comencera en tempoꝛel court, & donques ſi beſoign ſoit ils eſcrier̄ al ſpiritual judge ſi general baſtardy ſoit alledge: & le reaſon de ceo eſt, pur ceo q̄ home poet eſtre baſtard en le tēpoꝛal ley & mulier en le ſpiritual ley, & è converſo. Cō̄e home q̄ eſt engender en avowtry durād̄ le coȝture eſt mulier p̄ tēpoꝛal ley & baſtard per le ſpiritual ley. Et ſi home (d) bate un Clark, ſil ſue en le ſpiritual court a excom̄unicater luy pur le peche, il fait bien, mes ſil ſue la pur aȝ̄ amend̄ il avera prohibition 2. Fuit reſolve en meſme le caſe de Corbet, q̄ quād̄ le ſpiritual court avera juriſdiction, il covient q̄ tout le cauſe ſoit ſpiritual, come ſi p̄ſon libel vers lay home pur diſmes impoꝛts, le tēpoꝛal court avera juriſdiction, car ceo eſt mixt ove le tēpoꝛalty: & en meſme le caſe le matter

(a) Br. pleading 37 Fitz. brief 175.
(b) Fitz bar 96. Br. Abbe & Prior 14. Br. pleadings 123.
(c) Jenk. Cent. 289. 4 Co. 49. a. 2 Rolls 7. 5 Co. 7. a *Caudries* Caſe. 8 Co. 135. b. 2 Ventr. 43. Cawly 31.
(d) F. N. B. 51. K. 52. f. 12 H. 7. 23. a. 4 Co. 20. b. 5 Co. 51. a.

est mixt (p cõsequence) ove le tẽporalty, s, que lun est heir & que lauk est bastard: mes si le dit case de dismes soit ink parson & parson, ou ink pson & lay home, si le droit de dismes vient en question le spiritual court ayda jurisdictiõ. Vide tamen de circumspecte agatis, ou est dit q, (a) mere spiritualia appẽt al conusance eccles-astical, & Linwood c. de foro competent' fol. 7. dit, merè spiritualia sic dict', quia non habent mixturam tẽporaliũ: & ou le dit act dit, de mortali peccato, Linwood ceo expoũd & dit, Non (b) intelligas de omni peccato mortali, sed de tali cuj⁹ punitio de sua natura spectat ad forũ eccleſiasticũ: nam si de ratione cujuslibet peccati mortalis cognosceret Ecclesia, sic periret tẽporalis gladij jurisdictio, cum vix essent dare causã quin ratione peccati posſit deferri ad Eccleſiã. 3. Jn mesme le case de Corbet fuit resolve, q quãt tout le cause soit originalm̃t spiritual, uncore si apres en spiritual court ils sõt a trier tẽporal conusance prohibition gitra: come si lun parson dit q le lieu est deins son parish & lauter eonk, apres tiel matr mõstr prohibition gitra, & ove ceo accord 39 E. 3. 23 & (c) 5 H. 5. 10. b. Nota lecteur bon diversity ink repeal dun sentence de divorce done en le vie des parties, & a doner sentence de divorce apres le mort des pties: car appiert p cest case de 22 E. 4. q un sentẽce de divorce poet estre repeal en le spiritual court p suit la apres le mort des pties, mes si ascun des pties soient (d) mort devant ascũ divorce sentẽce en le ecclesiastical court, la ils ne poient suer en court Christiẽ a declarer le marriage void & a bastard issue; car le trial appẽt al court le roy originalm̃t, ou nul disability est p cõtence in le spiritual court: & ove ceo accord 39 Ass. pl. 10. 39 E. 3. 31. & 24 H. 8. tit. Bastardy 44. b. q divorce puis le mort dascun des pties, ou sentẽce declaratory q le marriage fuit avoid puis le mort dascũ des pties ne liera. Car ceo nest q en effect a bastarð issue de q ils noũt originalm̃t conusans come ad estre dit. Vide 19 Ass. pl. 2. q si 2 sont marry infra annos nubiles, & apꝰ le plein age divorce soit prise ink eux ceo dissolve le marriage, car la, semble port Assise pꝰ son barñ. Vide Bries Case in 5. part de mes Rep. fol. 98. & vide Cawdries Case in mesme le liure, & vide Buntings Case in le 4 part de mes Rep. f. 29. & vid. 11 H. 7. 9. & 34 H. 6. 14 & 12 H. 8. 5

Quãt al 2. point fuit object, q le pl' ayda travers sans ascũ office trove pur luy. Car quãt un direct & sufficiẽt office est trove en un county p force dũ Dié clausit extrem' ou Mandam⁹ puis le mort del ancestor, lane serr unqꝰ office trove arere pur mesm̃ la tre cy long come ceo estoit en sõ force. Car autrm̃t le ley ne unqꝰ ayda fine, & ove ceo accord 4 H. 4. 15. 14 E. 4. 5. 15 E. 4. 11. 2 H. 7. 12. 18. & pur ceo serr dure a chaser luy a trov̄ office pur luy devant

(a) 2 Inst. 488.

(b) 2 Inst. 488.

(c) Fitz. jurisdiction 39. Br. jurisdiction 30.

(d) 1 Rolls 360. 1 Brownl. 42. Moor 228. Co. Lit. 244. 2.

Cr. Jac. 186.

devant q̄ il poet trauers, ou p la ley il ne poet trover aſcun office en tiel caſe. 2. Fuit object que Leſtat de 2 E. 6. cap. 8. ad remedy c̄ ſi aſcun office fuit requiſite p le cōmō ley, les pols de ẏl Act ſont, And whereas one perſon or more is or ſhall be found heir to the Kings tenant by office where any other perſon is or ſhall be heir; or if one perſon or more be or ſhall be found heir by office in one County, and another perſon or perſons is or ſhall be found heir to the ſame party in another County, &c. be it enacted, that every perſon grieved by any ſuch office, ſhall and may have his or their travers to the ſame immediately, or after, at his or their pleaſure, and proceed and have like trial and advantage, as in other caſes of travers. Per q̄ appiert q̄ le pty grieve aūa trauers (ſans parler daſcū office) & poit & dāū tiel advantage cōe & auk caſe de trauers, & en auk caſes de trauers ne beſoigne aſcun office. Mes fuit reſolve que (cōe eſt caſe al barr eſt) le Plaintiff covient dāū office trove devant que il poet travers: Et q̄ſt al primer objection fuit reſpond & reſolve, que en tiel ſpecial caſe de troū dun heir ceſtuy que eſt droit hāe & grieve p l'office avera novel briefe de Diem clauſit extremum ou Mandamus: Car il eſt eſtranger al dit office, & pur ceo l'office ne concludera luy; & le dit rule & les liures ſont deſtre intend que meſme le pſon navera novel Diem clauſit extremum ou Mandamus aps office un foits duemt trove, mes auk pſon ceo aūa en ceſt caſe a prover luy m̄ heir, & ove ceo acc̄ 30 Aſſ. p. 28. Fitz. N.B. 261, 262. 4 H. 7. 15. b. 12 R. 2. tit. Livery 28. Sumf. Prær. 52. b. Et q̄ doit eſte office devāt q̄ il poet trauers le cōm ley en c̄ ad graund reaſon, car q̄ſt le Roy eſt ſuer de gard ou primer ſeiſin p l'office neſt reaſon que aſcun que prend luy m̄ hāe traūler l'office que l'auk neſt hāe tanqz le Roy ſoit ſuer dāver poſſ. p luy ou p gard ou p primer ſeiſin, car donques aps le primer office avoid p trauers il poet māe matk a barrer le Roy del gard & primer ſeiſin, que ne ſerē reaſonable: Autry al cōmō ley enterpleād giſt ou p 2 ſeūal offices en un m̄ county ſeūal pſons ſont ſeveralm̄t trove heirs a un m̄ pſon a un m̄ terre, ergo le pty grieve poet aū hāe a troū office pur luy, car auterm̄t nul enkpleū poet ēe, car le hāe q̄ fuit prim̄mēt trove hāe aūa Scire fac' en le Chanc' dis ceſty q̄ eſt trove hāe p 2 l'office (pur ceo q̄ le Roy eſt & aweroust a q̄ il ſerē livery) ſur que il appear & juſtifie le 2 office p le trial del privity del ſank, donqz il doit trauers le prim̄ office (car tout le enkpleū ſerē ſur c̄) & ſur le trial de c̄ ceſty q̄ eſt trove hāe aūa liūy. Iſſint q̄ appiert clerem̄t que ceſty que trauers l'office en tiel caſe doit aū office trove pur luy p le cōm ley. Et ove c̄ accord 38 E. 3. tit. Trav' 44. 16 E. 4. 4. F.N.B. 262. Car cēy q̄ doit ſuer livery

2 Inſt. 688, 689, &c.

Jenk. Cent. 285. Cro. Jac. 186. Co. Lit. 77. b. 2 Inſt. 690.

livery covient ẽaver office devant que il traversa, autermt ẽun stranger que destroy le title le Roy. Vide 36 E.3 tit. Travers 44. 12 E.4.18.b 16 E.44 a.43 Ass.20 9H.7.24.5 E.4.5. 12 H.6. 46 E.3. Briefe 618. Mẽt al 2 objection fuit respond & resolve, que le dit Act de 2 E.6.ne done traũs a cestuy que pretend luy mesm̃ destre heir enconꝰ un office trovant pur un auꝰ hẽe sans office trove p̃ luy, car ceo est incident a ceo que nest pas tolle p̃ geñal pois del Act, car donques tout enꝰpleaders serõ p̃ ceo toll aury, que ne unqꝫ fuit l'intention del Act, mes l'intention des feasors del Act fuit a toller ũ grãd doubt que fuit al com̃ ley, si ũ soit trove heir deins age p̃ un office, & puis auꝰ est trove hẽe en melme le County de plein age si ascun travers & enꝰpleader serõ immediatm̃t, ou si travers & enꝰpleader targera tanqꝫ le plein age del infant fuit vexatio quæstio cõe appiert en nre liures. s̃, 36 E.3. tit. Travers 44 5 E.4.4.1 H.7.14.a. F.N.B.162. & pur ouster cest doubt fuit l'estatꝰ de 2 (a) E.6. fait, p̃ que est enact q̃ le pty greive avera traũs immediatm̃t, quel pol (immediately), p̃ve l'intention del dit Act a p̃vider pur le dit doubt & a doner cestuy que fuit greive en tiel case traũs maintenant, mes nemy de alter le foundation del traũs, s̃. office que doit estre trove pur le pty greive devant que il poet traũs: Et ou le Statꝰ dit que il aũa traũs maintenant, est intẽ que il doit obserũ touts (b) incidents a un travers, car l'office est le groũd & foundation de son traũs. Mẽt al 3 point fuit resolve p̃ le greinder pt que ũ bill de (c) reviũ sur bill de reviũ ne p̃a admit pur le infinitenes. Car (d) infinit in jure reprobat: Et nul brief de journeys accoũts sur journeys accoũts s̃t̃ port. Mes fuit resolve p̃ touts q̃ cõe cest case est le dat̃ bill de reviũ fuit abated, car ceo p̃ie que le p̃mer bill s̃t̃ revive, & le p̃m̃ bill p̃ia que Martha poet traũs, & Martha est mort, & pur ceo le bill de reviũ doit aũ p̃ie que son heir poet traũs. Et illint p̃mer̃t le divorce si long cõe ceo remain en force lia le dyoit. Secondm̃t le nient troũ ẽun office disable le Pl̃ a traũser l'office. Et tercinment bill de reviũ sur reviũ come cest case est nient maintenable.

(a) 2 E.6. cap. 8. 2 Inst. 688, 689, &c.

(b) 2 Inst. 690.

(c) Cro. Jac 186.

(d) 6 Co. 45. a. 9 Co. 168. b. 12 Co. 24. 2 Inst. 340. 2 Bulstr 99. Hob. 159.

FINIS.